United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2035. 648

MARION BUTLER AND JOSIAH M. VALE, COPARTNERS, TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BUTLER & VALE, INTERVENERS AND CROSS-COMPLAINANTS, APPELLANTS,

vs.

INDIAN PROTECTIVE ASSOCIATION, RICHARD D. GWYDIR, J. W. EDWARDS, AND WENDELL HALL; CHARLES H. TREAT, TREASURER OF THE UNITED STATES; HUGH H. GORDON, AND BENJAMIN MILLER, ADMINISTRATOR OF ESTATE OF LEVI MAISH, DECEASED; HEBER J. MAY AND LOUIS A. PRADT, INTERVENERS, AND FREDERICK C. ROBERTSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JUNE 15, 1909.

Original Doc. 13/909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2035.

MARION BUTLER AND JOSIAH M. VALE, COPARTNERS, TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BUTLER & VALE, INTERVENERS AND CROSS-COMPLAINANTS, APPELLANTS,

vs.

INDIAN PROTECTIVE ASSOCIATION, RICHARD D. GWYDIR, J. W. EDWARDS, AND WENDELL HALL; CHARLES H. TREAT, TREASURER OF THE UNITED STATES; HUGH H. GORDON, AND BENJAMIN MILLER, ADMINISTRATOR OF ESTATE OF LEVI MAISH, DECEASED; HEBER J. MAY AND LOUIS A. PRADT, INTERVENERS, AND FREDERICK C. ROBERTSON, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1909.

In the Court of Appeals of the District of Columbia.

No. 2035.

MARION BUTLER et al., &c., Appellants,
vs.
INDIAN PROTECTIVE ASSOCIATION et al.

a Supreme Court of the District of Columbia.

Equity. No. 28000.

INDIAN PROTECTIVE ASSOCIATION, Complainant,
vs.
CHARLES H. TREAT, Treasurer of the United States; HUGH H. Gordon, and Benjamin Miller, Administrator of the Estate of Levi Maish, Deceased, Respondents.

Equity. No. 28005.

RICHARD D. GWYDIR, J. W. EDWARDS, and WENDELL HALL, Complainants,
vs.
CHARLES H. TREAT, Treasurer of the United States; HUGH H. Gordon, and Benjamin Miller, Administrator of the Estate of Levi Maish, Deceased, Defendants.

Equity. No. 28006.

FREDERICK C. ROBERTSON, Plaintiff,
against
HUGH H. GORDON, MARION BUTLER, and JOSIAH M. VALE, Individually and as Partners under the Firm Name and Style of Butler and Vale; George B. Cortelyou, Secretary of the Treasury; James R. Garfield, Secretary of the Interior; Charles H. Treat, Treasurer of the United States of America, Defendants.

UNITED STATES OF AMERICA,
District of Columbia:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed August 24, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28000.

INDIAN PROTECTIVE ASSOCIATION, Complainant,

vs.

CHARLES H. TREAT, Treasurer of the United States; HUGH H. GORDON, Benjamin Miller, Administrator of the Estate of Levi Maish, Deceased, Respondents.

To the Honorable Supreme Court of the District of Columbia:

The bill of complaint of the Indian Protective Association respectfully shows unto the Court as follows:

1. That it is a corporation duly incorporated under the laws of Delaware, having its principal office in the District of Columbia, and that it files this bill in its own right.

2. That the respondent Charles H. Treat, is of lawful age, a citizen of the United States and a resident of the District of Columbia, and is sued herein as Treasurer of the United States. That the respondent Hugh H. Gordon is of lawful age, a citizen of the United States and a resident of the State of Georgia, and is sued herein in his own right and as surviving partner of Levi Maish, deceased,

and Hugh H. Gordon, co-partners practicing law under the

2 firm name and style of Maish and Gordon. That Benjamin Miller is of lawful age, a citizen of the United States and a resident of the District of Columbia, and is sued herein as the administrator of the Estate of Levi Maish, deceased.

3. That the Indians occupying the Colville Indian Reservation in the State of Washington, and commonly known as the Colville Indians, including the San Puel Indians, the Columbia Indians, the Nez Perces Indians, the Okanagan Indians, the Lake Indians and the Colville Indians, on the ninth (9th) day of May, 1891, were possessed of, and occupied, the north half of the said Reservation, and on that day entered into an agreement with the United States Government, by which they ceded, surrendered and relinquished to the United States the north half of their said Reservation, in consideration, among other things, of the promise by the Commissioners of the United States, duly appointed, that the United States would pay them therefor, the sum of Fifteen Hundred Thousand Dollars, ($1,500,000.) That the United States, on its part, accepted said cession and surrender by the said Indians, and took and opened up to white settlement said north half of the said Colville Reservation, but failed and refused to comply with the promise of its Commissioners in respect to the payment of the said sum of Fifteen Hundred Thousand Dollars ($1,500,000), and was, on the twenty-

fifth (25th) day of July, 1894, so failing and refusing to pay to the said Indians the said sum or any part thereof.

4. That on the twelfth (12th) day of May, 1894, the said Indians mentioned in paragraph 3, residing on the said Colville Reser-
3 vation entered into a contract in writing with Levi Maish and Hugh H. Gordon, then engaged in the practice of law in the City of Washington, District of Columbia, under the firm name of Maish and Gordon, whereby said Indians employed the said Maish and Gordon as their counsel and attorneys for the prosecution and collection of the said claim, and whereby the said Maish and Gordon undertook and agreed to represent the said Indians in the prosecution of said claim and the collection from the United States of the amount due thereunder. That the contract so made and entered into, among other things, provided that there should be paid unto the said Maish and Gordon for their services, rendered, and to be rendered, in and about the prosecution of said claim and collection of the said sum of Fifteen Hundred Thousand dollars ($1,500,000), a sum equal to fifteen per cent. (15%) of any money that might be collected for said Indians on said claim. That said contract further provided that the fee therein provided for should be payable separately unto the said Maish and Gordon, out of any appropriation made by the Congress of the United States in settlement of said claim in advance of the payment to the said Indians of the part of such appropriation due them in the premises, and without waiting the distribution to the Indians of their part of the said fund. That the said contract by its terms was to continue in force for and during the term of ten (10) years from the date of its final execution and approval by the Commissioner of Indian Affairs and the Secretary of the Interior. That the said contract was on the seventeenth (17th) day of July, 1894, approved by the Com-
4 missioner of Indian Affairs, and on the twenty-fifth (25th) day of July, 1894, by the Secretary of the Interior, said approvals in both cases being subject to this modification in the term of the said contract: namely, that the compensation for the services of attorneys thereunder should be reduced from fifteen per cent. (15%) to ten per cent. (10%) of the amount recovered for the Indians. That said contract was accepted by the said Maish and Gordon as so modified on the twentieth (20th) day of January, 1899. A copy of said contract is hereto attached marked Exhibit A and prayed to be taken and read as a part of this bill

5. That on or about the twenty-sixth (26th) day of February, 1899, the said Levi Maish departed this life, leaving the said Hugh H. Gordon the surviving partner of the firm of Maish and Gordon, and that, on the seventeenth (17th) day of March, 1899, the respondent Benjamin Miller, was duly appointed by the Supreme Court of the District of Columbia, holding a Probate Court, administrator of the estate of the said Levi Maish, deceased, which appointment is still unrevoked and in force.

6. That after the death of the said Maish, and in January, 1901, the respondent Hugh H. Gordon, for himself and as surviving partner of the said firm of Maish and Gordon, entered into a contract

in writing with Heber J. May, and one Daniel B. Henderson, whereby he, the said Hugh H. Gordon, on behalf of the said Colville Indians, employed the said May and Henderson, as attorneys at law, to prosecute the said claim of the said Indians against the United States, and made said May and Henderson associate attorneys of record for said purpose, and expressly authorized and empowered them, as such associate counsel and attorneys, to represent the interests of the said Indians in said claim, and to secure the payment of the amount due from the United States. That in consideration of the services to be rendered by the said May and Henderson, the respondent Gordon, by and under his said contract, assigned unto the said May and Henderson one-fourth (¼) of the fee provided for, and to be paid to the said Maish and Gordon under the contract mentioned in paragraph four (4), and set forth in Exhibit A, together with the additional sum of Ten Thousand Dollars ($10,000), and agreed that the same should be paid promptly unto the said May and Henderson when and as soon as the fees provided to be paid them under their said contract with the Colville Indians was available. A copy of said contract between said Gordon and Henderson and May is hereto annexed, marked Exhibit B and prayed to be taken and read as a part of this Bill.

7. That under and by virtue of an agreement existing among Heber J. May and the said Daniel B. Henderson, and one Richard C. Adams, of the City of Washington, District of Columbia, that part of the fee in the said Colville claim assigned by the said respondent Hugh H. Gordon to the said May and Henderson, under the terms of the contract set forth in the preceding paragraph (the same being one-fourth (¼) of the total fee plus Ten Thousand Dollars ($10,000) belonged to, and was to be divided equally among, the said May, Henderson and Adams. A copy of said agreement between said May, Henderson and Adams is hereto attached, marked Exhibit C and prayed to be taken and read as a part of this Bill.

8. That on or about the third (3rd) day of September, 1901, Heber J. May, for value received, by his contract in writing, sold, assigned and transferred unto the said Richard C. Adams, all his right, title and interest in and to the fee to which he was entitled, or should thereafter become entitled, for the collection of the claim of the said Colville Indians against the United States under the aforesaid contract between said Maish and Gordon and said Colville Indians, and the said contract between Hugh H. Gordon, of the one part, and Heber J. May and Daniel B. Henderson, of the other part, and any additional fee arising out of said claim of the said Colville Indians to which the said May might be entitled, and the said May further agreed therein to render and perform all necessary legal and professional services thereafter in connection with the enforcement and collection of said claim, to the same extent and as fully as he would have done, or would have had to do, had he retained his interest in the said fee. A copy of said assignment to the said Richard C. Adams is hereto attached, marked Exhibit D and prayed to be taken and read as a part hereof.

9. That thereafter, and prior to the bringing of this suit, the said

Richard C. Adams, for value received, assigned, transferred and set over unto the complainant all his right, title and interest in and to the fee acquired by him from Heber J. May, under and by virtue of the assignment set forth in the foregoing paragraph. A copy of said assignment from said Richard C. Adams to the complainant appears as a part of said Exhibit D and is prayed to be taken and read as a part hereof.

10. That the said complainant association is a corporation
7 organized for the purpose, among other things, of prosecuting claims of Indians and of Indian tribes against the United States, and to that end employed attorneys therefor, and undertook the work of prosecuting such claims. That the said Daniel B. Henderson is, and at all times herein mentioned was, the general counsel for complainant association and that the assignment of the aforesaid interest in the Colville fee by Hugh H. Gordon, under the contract of January, 1901, was taken and accepted by him for, and has always belonged to, and been an asset of, the said complainant association.

11. That under the terms of the aforesaid contract of January, 1901, between Hugh H. Gordon, for himself, and as the surviving partner of the firm of Maish and Gordon on the one hand, and the said May and Henderson, on the other hand, May and Henderson proceeded with the prosecution of the said claim, completing the same on the twenty-first (21st) day of June, 1906, on which day Congress appropriated the sum of Fifteen Hundred Thousand ($1,500,000) Dollars for the said Indians in payment of said claim.

12. That under the terms of the agreements hereinbefore recited, upon the approval of the said Act of Congress, there would have become due and payable to the said complainant the sum of Forty-seven Thousand Five Hundred Dollars ($47,500), but for the fact that the said appropriation act contained the following provision:

"Jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render final judgment in the name of
8 Butler and Vale (Marion Butler and Josiah M. Vale), attorneys and counselors at law, of the City of Washington, District of Columbia, for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of said Indians in the prosecution of the claim of said Indians for payment for said land, and in determining the amount of compensation for such services the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim. Petition hereunder shall be filed in said court by the said attorneys (Butler and Vale), within thirty days from the passage of this act, and the Attorney-General shall appear on behalf of the defendants, and said cause shall be given preference for immediate hearing in said court, and the Secretary of the Treasury is hereby authorized and directed to pay the sum of money so awarded by said court to the said attorneys (Butler and Vale), upon

the rendition of final judgment, out of the said sum herein set apart or appropriated for the benefit of said Indians, and payment of said judgment shall be in full compensation to all attorneys who have rendered services to said Indians in the matter of their said claim, the same to be apportioned among said attorneys by said Butler and Vale as agreed among themselves: Provided, That before any money is paid to any attorney having an agreement with Butler and Vale as to the distribution of said fees, each of the same shall execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claims."

13. That in pursuance of the jurisdiction so conferred by the aforesaid act of Congress the Court of Claims did, on the sixth (6th) day of April, 1908, declare and adjudge that the total compensation due to the attorneys who had rendered services to said Indians in the prosecution of the said claim was Sixty Thousand Dollars ($60,000), which sum was, by the decree of the Court, apportioned among said attorneys as follows:

To Benjamin Miller, Administrator of the estate of Levi Maish, deceased	$6,000
To Hugh H. Gordon	14,000
To Marion Butler	20,000
To Josiah Vale	10,000
To Daniel B. Henderson	5,000
To Heber J. May	3,000
To Frederick C. Robertson	2,000

14. That under and by virtue of the contract between Hugh H. Gordon, acting in his individual capacity and as surviving partner of the firm of Maish and Gordon, on the one part, and Henderson and May, on the other part, as set forth in paragraph 6, and the subsequent assignments from Henderson and Adams, as set forth in paragraphs 9 and 10, a large sum of money, to-wit: the sum of Nine Thousand Five Hundred Dollars ($9,500) is due the complainant out of the aggregate sum of Twenty Thousand Dollars ($20,000) awarded to Hugh H. Gordon and Benjamin Miller, administrator of the estate of Levi Maish.

15. That since the passage of the decree of the Court of Claims referred to in paragraph 13, the said Hugh H. Gordon and Benjamin Miller, administrator as aforesaid, positively refuse to recognize the right of the complainant in and to the amounts claimed by it, as set forth in paragraph 14, but deny all right of the complainant in and to said two amounts of Six Thousand ($6,000) Dollars and Fourteen Thousand ($14,000) Dollars, respectively, awarded to them by the decree of said court. That complainant is informed and believes, and therefore alleges, that it is the purpose of the said Hugh H. Gordon and Benjamin Miller, Administrator, to demand the delivery to them by the defendant Charles H. Treat, Treasurer of the United States, of the Treasury warrants for the payment of said sums of Six Thousand ($6,000) Dollars and Fourteen Thousand

($14,000) Dollars respectively in utter disregard of the rights of your complainant under their assignments to it as hereinbefore recited.

16. Complainant further alleges that the said Hugh H. Gordon is a non-resident of the District of Columbia and has no property within the jurisdiction of this court and that unless restrained and prevented by the writ of injunction to be issued out of this Honorable Court the defendants Hugh H. Gordon and Benjamin Miller, administrator of the estate of Levi Maish, deceased, will demand of their co-defendant Charles H. Treat, Treasurer of the United States,
11 the delivery to them of the Treasury warrants for the said sums of Fourteen Thousand ($14,000) Dollars and Six Thousand ($6,000) Dollars respectively and the said Charles H. Treat will surrender the same to his said co-defendants, which will result in an irreparable injury to your complainant as is in this bill of complaint hereinbefore more fully set forth.

The premises considered, complainant prays:

1. That the writ of subpœna may issue out of this Honorable Court directed against the said Hugh H. Gordon, Benjamin Miller, administrator of the estate of Levi Maish, deceased, and Charles H. Treat, Treasurer of the United States, commanding them and each of them to be and appear in this Honorable Court on some certain day to be named therein to answer the premises (though not under oath, answer under oath being hereby expressly waived) and to abide by, and perform such orders or decrees as may be herein passed.

2. And that the writ of injunction may also issue out of this Honorable Court enjoining and strictly prohibiting the said Hugh H. Gordon and Benjamin Miller, administrator of the estate of Levi Maish, deceased, and each of them from demanding or receiving from the said Charles H. Treat, either the said sum of Six Thousand Dollars ($6,000) or the said sum of Fourteen Thousand Dollars ($14,000) mentioned in said judgment of the Court of Claims, or any warrant or warrants, writing or writings therefor, and enjoining and strictly prohibiting the said Charles H. Treat, Treasurer of the United States, or any one on his behalf from paying either of
12 said sum of Six Thousand Dollars ($6,000) or Fourteen Thousand Dollars ($14,000) respectively to the said Hugh H. Gordon or Benjamin Miller, administrator of the estate of Levi Maish, deceased, or delivering any warrant or other instrument of writing for the payment thereof to said Hugh H. Gordon, or Benjamin Miller, administrator as aforesaid, until the further order of this Court.

3. And that a receiver may be appointed by this Honorable Court to ask, demand and receive from the said Charles H. Treat, Treasurer of the United States, the said sum of Six Thousand Dollars ($6,000) and fourteen Thousand Dollars ($14,000) respectively, or the warrant or warrants representing the same, and deposit the proceeds thereof in some depository to be named by the Court until the further order of the Court herein.

4. And that this Honorable Court may by its decree ascertain how much of the said two sums of Six Thousand Dollars ($6,000) and Fourteen Thousand Dollars ($14,000) respectively is the prop-

erty of and belongs to your complainant, and may decree the payment to your complainant of the sum so ascertained to be due to it out of said sum.

5. And that your complainant may have such other and further relief as its case may require and this Honorable Court may be competent to decree.

The defendants to this Bill are Charles H. Treat, Treasurer of the United States, Hugh H. Gordon, and Benjamin Miller, administrator of the estate of Levi Maish, deceased.

INDIAN PROTECTIVE ASSOCIATION,
By JOHN MORTON, *Vice President.*

CHAS. POE,
BERRY & MINOR,
Solicitors for Complainant.

13 DISTRICT OF COLUMBIA, *ss:*

John Morton, being first duly sworn upon oath deposes and says that he is the Vice President of the Indian Protective Association: that he has read the foregoing bill of complaint by him subscribed and knows the contents thereof; that the matters and things therein stated upon his own knowledge are true, and those things stated upon information and belief he believes to be true.

JOHN MORTON.

Subscribed and sworn to before me this 22d day of August, A. D. 1908.

[SEAL.] FRANK D. BLACKISTONE,
Notary Public, D. C.

14 EXHIBIT A.

Contract Between the Several Tribes of Indians Resident upon the Colville Indian Reservation, and Levi Maish, of Pennsylvania, and Hugh H. Gordon, of Georgia.

This agreement made and entered into by and between the San Puell Indians, through and by —— —— their Agent, Attorney, and Representative, duly authorized and empowered by letters of attorney hereto attached and made part hereof the Columbia Indians or Moses' Band, through and by —— —— Moses their Agent, Attorney, and Representative, duly authorized and empowered by letters of attorney hereto attached and made part hereof, the Nez Perces Indians or Joseph's Band, through and by Joseph their Agent, Attorney, and Representative, duly authorized and empowered by letters of attorney hereto attached and made part hereof the Okanagan Indians, through and by Martin Tonaskit their Agent, Attorney, and Representative, duly authorized and empowered by letters of attorney hereto attached and made part hereof the Colville Indians, through and by Barnaby their Agent, Attorney, and Representative,

duly authorized and empowered by letters of attorney hereto
15 attached and made part hereof and the Lake Indians, through and by Bernard their Agent, Attorney, and Representative, duly authorized and empowered by letters of attorney hereto attached and made part hereof parties of the first part, and Levi Maish of Pennsylvania and Hugh H. Gordon of Georgia, Attorneys at Law, parties of the second part, witnesseth that:

Whereas on the 9th day of May 1891, an agreement was made and entered into by and between the United States Government, through its duly authorized Commissioners, on the one part, and the Indians rsident upon the said Colville Reservation, through their Chiefs and a majority of the male Indians above the age of eighteen (18) years on the other part; by which agreement the Northern portion of said Reservation was, upon certain terms and conditions, ceded, surrendered and relinquished to the United States:

And whereas the principal consideration to said Indians for the cession and surrender of said portion of their Reservation, was the express agreement upon the part of the United States Government to pay to said Indians "The sum of One Million, Five Hundred Thousand Dollars (1,500,000) in five annual instalments of Three Hundred Thousand Dollars ($300,000) each, with interest thereon at five per centum (5%)."

And whereas the United States Government has failed to comply with terms of said agreement, and no provision has been made to pay said Indians the amount stipulated in the said agreement for the cession of said lands:

And whereas the said Indians entered into said agreement
16 with an implicit trust in the good faith of the United States Government, and now most earnestly protest that their lands should not be taken from them without the payment of the just compensation stipulated in said agreement:

And whereas the said Indians, resident upon said Reservation, are desirous of having their interests in said claim properly represented by Counsel:

Now therefore, in consideration of the foregoing, and in further consideration of the mutual covenants hereinafter specified the said Indians, through their duly authorized Agents, Attorneys, and Representatives, parties of the first part, and Levi Maish of Pennsylvania and Hugh H. Gordon of Georgia, Attorneys at Law, parties of the second part, do hereby covenant and agree as follows:

First. The purpose of this agreement is to secure the presentation and prosecution of the claims of said Indians for payment for their interest in said ceded lands; and to secure the services of said Maish and Gordon as Counsel and Attorneys for the prosecution and collection of said claims.

Second. The said Indians hereby employ and engage the said Maish and Gordon as their Counsel and Attorneys for the prosecution and collection of said claims against the United States Government; and the said Maish and Gordon hereby agree to act as Attorneys and Counsel for said Indians, and covenant that they will faithfully and diligently represent and urge the claims of said Indians before the

Courts, the Departments of the Government, the Congress of
17 the United States, or before any other tribunal which may take cognizance of said claims, and will do all in their power to see that justice is done to said Indians.

Third. In consideration of the foregoing covenants, and in consideration of the services to be rendered by said Maish and Gordon, the said Indians hereby agree to pay to said Maish and Gordon a sum equal to fifteen per centum (15%) of any money or sums of money which may be collected for said Indians under the provisions of this contract; and the said Indians hereby agree that the said Maish and Gordon shall be paid as compensation for their services the sum of fifteen per centum (15%) of any appropriation which may be made for the payment of said claims.

Fourth. In consideration of the compensation herein specified, the said Maish and Gordon are to take sole and absolute charge, direction and control of the prosecution of said claims, and they are to pay all expenses which may be incurred by them in the prosecution of said claims; but they are not to be liable for any expenses incurred by said Indians or anyone claiming to represent them, unless such expenses have been incurred under or in pursuance of the written direction or consent of said Maish and Gordon; nor shall any additional counsel be employed in this case without the written consent of said Maish and Gordon.

Fifth. It is hereby expressly agreed that the fee of fifteen per centum (15%) hereinbefore stipulated as the compensation of said Maish and Gordon for their services, is to be paid to them in a separate and special warrant out of any appropriation which may be made for the payment of said claims or any part thereof; and
18 the balance of said appropriation or appropriations is to be distributed *per capita* to the Indians who may be entitled thereto, or expended for their benefit in such manner as Congress may direct.

It is distinctly understood and agreed that the payment of said fee to said Maish and Gordon is not to be delayed until the distribution of said appropriation or appropriations to the Indians who may be entitled thereto; but the Disbursing Officers of the United States Government are hereby authorized to issue said separate and special warrant, and pay to said Maish and Gordon the said fee of fifteen per centum (15%) as soon as any appropriation or appropriations for the payment of said claims are available.

It is further agreed that said Maish and Gordon are to be in no way responsible for, or connected with the distribution of the balance of any funds which may be due and payable to said Indians; it being distinctly understood that the duties and obligations of said Maish and Gordon under this contract will be fully met and discharged, and their said compensation will be due and payable when and as soon as said appropriation or appropriations for the payment of said claims have been made.

Sixth. This contract is to continue in force for and during the term of ten (10) years from the date of its final execution and ap-

proval by the Commissioner of Indian Affairs and the Secretary of the Interior.

In witness where*fore* the said Indians, parties of the first part, through and by their said Agents, Attorneys, and Representatives, have hereunto affixed their hands and seals at Colville Agency
19 Miles P. O., in the State of Washington, on this 12th day of May, A. D. 1894. And Levi Maish and Hugh H. Gordon, parties of the second part, have hereunto affixed their hands and seals at Washington, D. C. this — day of —— A. D. 1893.

THE —— ——,
By —— ——,
Representative, Agent, and Attorney.
THE COLUMBIA INDIANS OR MOSES' BAND,
his
By MOSES, x [SEAL.]
mark.
Representative, Agent, and Attorney.
THE NEZ PERCE INDIANS OR JOSEPH'S *H*AND,
his
By JOSEPH, x [SEAL.]
mark.
Representative, Attorney, and Agent.
THE OKANAGAN INDIANS,
his
By MARTIN TONASKIT, x [SEAL.]
mark.
Representative, Attorney, and Agent.
THE COLVILLE INDIANS,
his
By BARNABY, x [SEAL.]
mark
Representative, Attorney, and Agent.
THE LAKE INDIANS, [SEAL.]
By BERNARD,
Representative, Attorney, and Agent.
LEVI MAISH.
HUGH H. GORDON.

20 *Certificate of the U. S. Indian Interpreter.*

I, Robert Flett, U. S. Indian Interpreter for the Colville Indian Agency do hereby certify on honor that I was present when the foregoing contract was executed by the above named Indians, acting as the duly authorized Agents, Attorneys and Representatives of the respective tribes or bands of Indians named in said contract, and that the said contract was carefully read and by me correctly interpreted, and the contents fully explained to, and understood by said Indians, and the identity of said contract with the contract embodied

in the Letters of Attorney thereto attached, fully and clearly made known to said Indians before the signing and execution of the same.

ROBERT FLETT,
U. S. Indian Interpreter.

Certificate of U. S. Indian Agent.

I, John W. Bubb, Capt. U. S. A., Acting U. S. Indian Agent for the Colville Agency, upon the Colville Indian Reservation, do hereby certify that the above named Indians, to wit: Moses, Joseph, Martin Tonaskit, Barnaby, Bernard, came into my presence on the
21 12th day of May, A. D. 1894; and after the said contract had been read and interpreted to them, the said Indians above named acknowledged to me that they had executed the said contract in the name and behalf of the respective tribes represented by them and in accordance with and under the authority granted in the respective letters of attorney thereto attached. I further certify that to the best of my knowledge and belief, the above contract represents the wishes of the tribes or bands of Indians therein named.

JNO. W. BUBB,
Capt. U. S. A., Acting U. S. Indian Agent for the Colville Agency upon the Colville Reservation.

STATE OF WASHINGTON, *ss:*

I, Jesse Arthur, Judge of the Judicial District for Spokane and Stevens County, of the State of Washington, said Court being a Court of record, do hereby certify that the foregoing contract was executed in my presence at Colville Agency Miles P. O. in the State of Washington, on this 12th day of May A. D. 1894 and the interested parties therein as stated to me at the time and place of execution, were, the Okanagan Indians, the Colville Indians, the Columbia Indians, or Moses' Band, the Nez Perces Indians or Joseph's Band, and the Lake Indians, residing upon the Colville Reservation in the State of Washington, parties of the first part; and Levi Maish
22 of Pennsylvania and Hugh H. Gordon of Georgia, Attorneys at Law, parties of the second part.

I further certify that this contract was made and executed in my presence by the duly authorized Agents and Attorneys of the parties of the first part as follows:

——— ———,
Agent and Attorney for the San Puell Indians.
MARTIN TONASKIT,
Agent & Attorney for the Okanagan Indians.
BARNABY,
Agent & Attorney for the Colville Indians.
MOSES,
Agent & Attorney for the Columbia Indians or Moses' Band.
JOSEPH,
Agent & Attorney for the Nez Perces Indians or Joseph's Band.
BERNARD,
Agent & Attorney for the Lake Indians.

The source and extent of the authority claimed by each of the said Agents or Attorneys to execute said contract, as stated to me at the time of execution, is found in certain letters of attorney, executed respectively by said Tribes of Indians; which letters of attorney are attached to the contract aforesaid, and made part thereof.

I further certify that prior to its execution the said contract was carefully interpreted, and its contents and import fully explained, and its identity with the contract in the said letters of attorney clearly made known and demonstrated to said Agents and Attorneys of said parties of the first part.

23 It was also stated to me at the time that the said Maish and Gordon, parties of the second part, would execute said contract before a Probate Judge in the City of Washington, District of Columbia.

In witness whereof I have hereunto set my hand and seal this 12th day of May, A. D. 1894, at Colville Agency in the State of Washington, at the time and place of the execution of the foregoing contract.

JESSE ARTHUR, [SEAL.]
Judge of Spokane & Stevens Co. Judicial District, State of Washington.

DISTRICT OF COLUMBIA,
City of Washington, ss:

I, Walter S. Cox Associate Justice of the Supreme Court of the District of Columbia, the same being a court of record, do hereby certify that the foregoing contract was executed in my presence at chambers, in the City of Washington, District of Columbia; on this 5th day of July A. D. 1894, by Levi Maish of Pennsylvania and Hugh H. Gordon of Georgia, Attorneys at Law, and that it was stated to me at the time of the signing of said contract that the persons or parties interested in said contract are: the Columbia Indians or Moses' Band, the Nez Perces Indians or Joseph's Band, the Okanagan Indians, the Colville Indians, and the Lake Indians, parties of the first part, by their respective Agents and Attorneys, named in said contract, and the said Levi Maish and Hugh H. Gordon, Attorneys at Law, parties of the second part; and that I have no

24 interest, present or prospective, in the rights, claims or other matters mentioned therein.

In testimony whereof I have hereunto set my hand and caused the seal of the Court to be affixed this 5th day of July A. D. 1894.

WALTER S. COX,
Justice of the Supreme Court of the District of Columbia.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *July* 17, 1894.

The within contract is approved on condition that the attorneys shall accept as full compensation for the services to be rendered there-

under, the sum of ten (10) per centum of the amount or amounts they shall recover to the Indians thereunder.

D. M. BROWNING,
Commissioner.

CAF.

DEPARTMENT OF INTERIOR, *July* 25, 1894.

The within contract is approved on condition that the attorneys accept as full compensation for the services to be rendered thereunder, the sum of ten (10) per centum of the amount or amounts they shall recover to the Indians thereunder, without endorsing or admitting, however, the recitals of this instrument to the effect that the United States made or violated any contract with said Indians. It being the view of this Department that the incipient contract proposed by the Commission was never perfected and needed the ratification of Congress to make it an obligation of the United States.

WM. H. SIMS,
Acting Secretary.

JAN'Y 20, 1899.

The foregoing is accepted as approved.

LEVI MAISH,
For MAISH & GORDON.

This agreement made and entered into by and between Hugh H. Gordon, of Atlanta, Georgia, for himself, and as surviving partner of the firm of Maish & Gordon, party of the first part, and Heber J. May and Daniel B. Henderson, parties of the second part, witnesseth:

That whereas Levi Maish and said Hugh H. Gordon did enter into a contract, approved by the Secretary of the Interior July 25th, 1894, with the Columbia Indians, or Moses' Band, the Nes Perces Indians, or Joseph's Band, the Okanagan Indians, the Colville Indians and the Lake Indians, whereby said Maish & Gordon were employed as attorneys by said Indians to collect from the United States $1,200,000 due them under a contract of May 9th, 1891, and

Whereas, the party of the first part has employed, and by these presents does employ, the said parties of the second part as attorneys at law to prosecute said claim of said Indians against the United States,

Now therefore, It is mutually agreed that said parties of the second part shall be and become associate attorneys of record for said Indians in the prosecution of said claim, and they are hereby expressly authorized and fully empowered, as such associate Counsel and Attorneys, to represent the interests of said Indians in said claims, and to secure the payment of the amount due from the United States; they, the said parties of the second part, hereby agreeing that they will faithfully and diligently represent and urge the claims of said

Indians before the Courts, the Departments of the Govern-
27 ment, the Congress of the United States, or before any other tribunal which may take cognizance of said claims, and will pay all expenses that may be incurred by them in the prosecution of said claims.

In consideration of the foregoing covenants and of the services to be rendered by said parties of the second part the said party of the first part assigns unto said parties of the second part one-fourth (¼) of the fee that may become due and payable unto him under said contract, and agrees that twenty-five — (25%) thereof, together with the additional sum of Ten Thousand ($10,000) Dollars shall be paid to them as compensation of their services as such attorneys, the remainder, or seventy-five (75%) per cent. less the $10,000.00 aforesaid to be retained by the said party of the first part.

And the said party of the first part hereby declares that he has executed concurrently herewith, and has delivered unto the said parties of the second part, for record in the office of Indian Affairs, assignment of twenty-five (25%) per cent. of said fee, which is to be promptly paid to them out of said fee, when received by said party of the first part out of any appropriation which may be made for the payment of said claim to said Indians.

Reference is expressly hereby made, for a more complete interpretation of this agreement to the aforesaid contract betwen the said Indians and Maish & Gordon.

Witness our hands and seals, this — day of January,
28 1901.

(Signed) HUGH H. GORDON. [SEAL.]
(Signed) DAN'L B. HENDERSON. [SEAL.]
(Signed) HEBER J. MAY. [SEAL.]

Witnesses to signature of Hugh H. Gordon:

(Signed) C. L. MESHIER,
(Signed) A. B. WEIL.

Witnesses to signatures of Heber J. May & D. B. Henderson:

(Signed) R. H. MAY.

29 EXHIBIT C.

This agreement, By and among Heber J. May, Daniel B. Henderson and Richard C. Adams,

Witnesseth, That whereas said May and Henderson have entered into a contract with Hugh H. Gordon, dated January, 1901, for the collection of a claim of the Colville Indians against the United States, in which contract each of the parties owns a one-third interest of any fee that may be collected by said May and Henderson.

Now, therefore, It is hereby expressly agreed and declared that said Adams is equally interested with each of the other parties hereto in said contract and that one-third of the fee realized by them from

said claim shall belong to him, in consideration of the services and assistance by him to be rendered in the prosecution thereof.

Witness our hands, This 23rd day of January, 1901.

(Signed) HEBER J. MAY.
DANIEL B. HENDERSON.
RICHARD C. ADAMS.

Witnesses:
——— ———,
——— ———.

30 EXHIBIT D.

This agreement Witnesseth, That, for value received, I have hereby assigned unto Richard C. Adams all my right, title and interest in and to the fee to which I am entitled or shall be entitled for the collection of the claim of the Colville Indians against the United States, under a contract made by Levi Maish and Hugh H. Gordon with certain representatives of said Indians, which contract was approved by the Secretary of the Interior, July 25, 1894; and I further promise and agree to render and perform all necessary legal and professional services in connection with the enforcement and collection of said claim, to the same extent and as fully as I would have done or would have had to do had I retained my interest therein, it being understood and agreed hereby that said interest is one-third (1/3) of the fee allowed under said contract, plus the sum of ten thousand dollars ($10,000), but any additional fee which may be recovered therein is likewise included in this assignment and shall belong to the said Richard C. Adams.

Witness my hand this 3d day of September, 1901.

HEBER J. MAY.

September 4, 1901, I hereby assign to the Indian Protective Association all my rights and interest in and to the above contract for value received.

RICHARD C. ADAMS.

31 *Bill.*

Filed August 26, 1908.

In the Supreme Court of the District of Columbia.

No. 28006.

FREDERICK C. ROBERTSON, Plaintiff,
against
HUGH H. GORDON, MARION BUTLER, and JOSIAH M. VALE, Individually and as Partners under the Firm Name and Style of Butler and Vale; George B. Cortelyou, Secretary of the Treasury; James R. Garfield, Secretary of the Interior; Charles H. Treat, Treasurer of the United States of America, Defendants.

To the Honorable the Supreme Court of the District of Columbia, holding an Equity Court:

The Plaintiff states as follows:

(1.) That he is a citizen of the State of Washington, residing at Spokane, in said State, and brings this suit in his own right, as an attorney and counsellor-at-law, as the claimant to an undivided part of the moneys, properties, awards and evidences thereof hereinafter in this Bill of Complaint set out.

(2.) That the defendant Hugh H. Gordon is a citizen of the State of Florida, residing at Biscayne, in said State, and is sued in this action as the claimant in his own right to an undivided part
32 in the moneys, properties, awards and evidences thereof hereinafter in this Bill of Complaint set out.

That the defendant Marion Butler and the defendant Josiah M. Vale are partners under the firm name and style of Butler and Vale, attorneys and counsellors-at-law, having their and each of their place of business, being domiciled and to be found in the District of Columbia, and they and each of them are sued herein individually and as such partners, and as having an indeterminate interest in and control and custody of the moneys, properties, awards and evidences thereof involved in this suit, without title to or interest in any part of the sum and sums claimed by plaintiff and said defendant Gordon, except to the several and respective use of plaintiff and said defendant Gordon.

That the defendant George B. Cortelyou is the Secretary of the Treasury of the United States of America, having his office, being domiciled and to be found in the District of Columbia, and is sued as such Secretary.

That the defendant James R. Garfield is the Secretary of the Interior of the United States of America, having his office, being domiciled and to be found in the District of Columbia, and is sued as such Secretary.

That the defendant Charles H. Treat is the Treasurer of the United

States of America, having his office, being domiciled and to be found in the District of Columbia, and is sued as such Treasurer.

(3.) That on May 12, 1894, the Indians residing on the Colville Reservation created in the State of Washington by Executive Order dated July 2, 1872, consisting of the Columbia Indians or
33 Moses Band, the Nez Perce Indians or Joseph Band, the Okanogan Indians, the Colville Indians, and the Lake Indians, all hereinafter referred to as the Colville Indians, through their several and respective agents, attorneys and representatives duly authorized, covenanted and agreed with Levi Maish (since deceased) and the said defendant Hugh H. Gordon to employ and engage the said Maish and the said Gordon as their attorneys and counsel to prosecute and collect their claims against the United States of America for payment for certain lands ceded, surrendered and relinquished to the United States of America, agreeing to pay to said Maish and said Gordon a sum equal to fifteen per centum (15%) of any money or sums of money which might be collected for the said Indians under the provisisons of the said contract, further agreeing that said Maish and said Gordon should be paid as compensation for their services the sum of fifteen per centum of any appropriation which might be made for the payment of said claims. That it was further expressly agreed in the said contract that the fee stipulated as the compensation of said Maish and said Gordon for their services was to be paid to them in a separate and special warrant out of any appropriation which should be made for the payment of said claims or any part thereof, and only the balance of said appropriation or appropriations should be distributed to the said Colville Indians; and that the payment of the said fees to said Maish and said Gordon was not to be delayed until the distribution of the said appropriation or appropriations to the said Colville Indians,
34 but the disbursing officers of the United States Government were thereby authorized to issue the said separate and special warrant to pay said Maish and said Gordon as soon as any appropriation or appropriations for the payment of said claims should be available, at which time the said compensation was made due and payable; and said Maish and said Gordon agreed to take sole and absolute charge, direction and control of the prosecution of the said claims and to pay all expenses which might be incurred by them therein. That the said contract was duly executed and accepted by all the parties, and approved by the Commissioner of Indian Affairs on July 17, 1894, "On condition that the attorneys shall accept as full compensation for the services to be rendered thereunder the sum of ten per cent of the amount or amounts they shall recover to the Indians thereunder," and on July 25, 1894, was duly approved by the Secretary of the Interior on the same condition. That as so approved the said contract was accepted by said Maish, for himself and said Gordon, on January 20, 1899. The original of the said contract will be exhibited to the Court and to the parties, as may be desired or ordered.

(4.) That by the sixth paragraph thereof, the said contract was to continue in force for and during the term of ten (10) years from

the date of its final execution and approval by the Commissioner of Indian Affairs and the Secretary of the Interior, to-wit: until July 26, 1904, but plaintiff avers that the said contract was impliedly continued in force, and is yet in full force and effect by virtue of the continued service thereunder, recognized, acquiesced in and confirmed by the United States of America, trustee for the said Colville Indians then and now, and by the said Colville Indians, and
35 by the Congress of the United States of America, and accepted by said Maish and said Gordon, and by those claiming by, through and under them, or rendering service to the said Colville Indians which resulted in the prosecution and collection of the said claims in full, including plaintiff and said defendants Gordon, Butler and Vale, to the extent that the said contract was held and considered an element in determining the amount of compensation for such services, and for all services rendered by the said and all other attorneys, in the said matter, as will hereinafter more fully appear

(5.) That said Maish and Gordon, and said defendant Gordon entered into arrangements and agreements with plaintiff to assist in prosecuting and securing the collection and payment of the said claims of the said Colville Indians, and in consideration of the assistance which plaintiff agreed to and did furnish to him, the said defendant Gordon agreed to and did admit plaintiff to an equal copartnership and share with him therein, and agreed that plaintiff should be paid and receive certain compensation, which arra*gne*ments and agreements were afterwards adjudged, settled and reduced to writing between them in the City of Washington, District of Columbia, as follows:

MARCH 28, 1906.

This agreement made between F. C. Robertson and Hugh H. Gordon, Witnesseth, that they shall share equally in all monies appropriated by Congress, or allowed by the Interior Department, which may accrue to said Gordon or said Robertson as attor-
36 ney fees, growing out of the rendition of services to the Colville tribe of Indians, whether allowed under the Maish-Gordon contract with said tribes, or on any other theory whatsoever, which said interest is to inure to either party, no matter in whose name such allowance is made. Both parties hereto to mutually labor to secure such allowance. Out of said Robertson's share he agrees to compensate R. D. Gwyder by a reasonable compensation. The fees to be divided between said Robertson & said Gordon as herein provided shall be the net sum accruing to said Gordon, after settling with other attorneys under contracts heretofore made by said Gordon.

F. C. ROBERTSON.
HUGH H. GORDON.

And plaintiff at said defendant Gordon's request agreed to and did advance to him a certain sum of money to aid in the prosecution of said claim, to be repaid out of the moneys awarded to said defendant Gordon for account of such services, which advance is evidenced by said defendant Gordon's acknowledgement in writing, in the words and figures following:

BISCAYNE, FLORIDA, *M'ch* 21*st*, 1906.

$150.00.

Received of F. C. Robertson, of Spokane, Washington, one hundred & fifty dollars, with which to pay expenses of trip to Washington, D. C., to look after the interests of Gordon, Gwydir and Robertson in the matter of the claims of the Indians of the Col-
37 ville Reservation against the U. S. Government. In case we succeed in collecting said claim, I agree that out of my share of the profits, I will repay to said Robertson the said one hundred and fifty dollars. ($150.00).

HUGH H. GORDON.

whereby plaintiff and said defendant Gordon were thereby given an undivided equal share and ownership in and a lien upon their respective claims, each upon the other's, and upon any award and awards made on account of the same, and upon any warrant, draft, cheque or other evidence of indebtedness which might be issued in payment thereof, and upon the proceeds of any such warrant, draft, cheque or other evidence of indebtedness, and upon the fund created by law or in any manner for the payment and satisfaction of the said claim. The originals of said agreement, acknowledgment and receipt will be produced at the hearing, and whenever requested by the Court or any party to this suit.

(6.) That such prosecution of said claims followed that the same were recognized, collected and paid by the United States of America to the said Colville Indians, who accepted the same, as follows:

Public, No. 258.

An Act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and seven.

* * * * * * *

38 Colville Reservation.

To carry into effect the agreement bearing date May ninth, eighteen hundred and ninety-one, entered into between the Indians residing on the Colville Reservation and commissioners appointed by the President of the United States under authority of the Act of Congress approved August nineteenth, eighteen hundred and ninety, to negotiate with the Colville and other bands of Indians on said Colville Reservation for the cession of such portion of said reservation as said Indians might be willing to dispose of, there shall be set aside and held in the Treasury of the United States for the use and benefit of said Indians, which shall at all times be subject to the appropriation of Congress and payment to said Indians, in full payment for one million five hundred thousand acres of land opened to settlement by the Act of Congress "To provide for the opening of a part of the Colville Reservation in the State of Washington, and for other purposes," approved July first, eighteen hundred and

ninety-two, the sum of one million five hundred thousand dollars, and jurisdiction is hereby conferred upon the Court of Claims to hear, determine and render final judgment in the name of Butler and Vale (Marion Butler and Josiah M. Vale), attorneys and counsellors-at-law, of the city of Washington, District of Columbia, for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of said Indians
39 in the prosecution of the claim of said Indians for payment for said land, and in determining the amount of compensation for such services the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim. Petition hereunder shall be filed in said court by the said attorneys (Butler and Vale), within thirty days from the passage of this Act, and the Attorney General shall appear on behalf of the defendants, and said cause shall be given preference for immediate hearing in said court, and the Secretary of the Treasury is hereby authorized and directed to pay the sum of money so awarded by said court to the said attorneys (Butler and Vale), upon the rendition of final judgment, out of the said sum herein set apart or appropriated for the benefit of said Indians, and payment of said judgment shall be in full compensation to all attorneys who have rendered services to said Indians in the matter of their said claim, the same to be apportioned among said attorneys by said Butler and Vale as agreed among themselves: *Provided,* That before any money is paid to any attorney having an agreement with Butler and Vale as to the distribution of said fees, each of the same shall execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claim. Approved, June 21, 1906. (34 Stats., 325.)

and the said fund, except so much thereof as already has
40 been appropriated and paid to and received by the said Colville Indians is held in trust in the Treasury of the United States subject to the claim and liens of this plaintiff and the said defendants Butler, Vale and Gordon.

That an appropriation was made by Congress for a payment to the said Colville Indians, by the Act of Congress, Public 154 (H. R. 22580), entitled:

An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian Tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and eight.

* * * * * * *

In part payment to the Indians residing on the Colville Reservation for the cession by said Indians to the United States of one million five hundred thousand acres of land opened to settlement by an Act of Congress "To provide for the opening of a part of the

Colville Reservation in the State of Washington, and for other purposes," approved July first, eighteen hundred and ninety-two, being a part of the full sum set aside and held in the Treasury of the United States in payment for said land under the terms of the act approved June twenty-first, nineteen hundred and six, ratifying the agreement ceding said land to the United States under date May ninth eighteen hundred and ninety-one, three hundred thousand dollars, said sum of three hundred thousand dollars to be paid to or expended for the benefit of said Indians under the direc-
41 tion of the Secretary of the Interior.
Approved March 1, 1907.

and said full sum of three hundred thousand dollars has been paid to and received by the said Colville Indians as a first payment of one-fifth the sum recovered by and for them as a result of the successful prosecution of their said claim against the United States of America, as aforesaid.

That an appropriation has been made for a further payment from the said trust fund to the said Colville Indians, by the Act of Congress, Public 104 (H. R. 15219), entitled:

An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and nine.

* * * * * * *

For the second of five installments to the Indians residing on the Colville Reservation for the cession by said Indians to the United States of one million five hundred thousand acres of land opened to settlement by an Act of Congress "To provide for the opening of a part of the Colville Reservation in the State of Washington, and for other purposes," approved July first, eighteen hundred and ninety-two, being a part of the full sum set aside and held in the Treasury of the United States in payment for said land under the terms of the Act approved June twenty-first, nineteen hun-
42 dred and six, ratifying the agreement ceding said land to the United States under date of May ninth, eighteen hundred and ninety-one, three hundred thousand dollars, to be expended for the benefit of said Indians in accordance with the provisions of the said Act setting aside in the Treasury the money in payment for the land ceded.
Approved, April 30, 1908.

And plaintiff avers that unless subjected to the payment and satisfaction of his and the other claims herein referred to for services in prosecuting and collecting the said sum set aside and held in the Treasury under the said Act of Congress of June 21, 1906, the full sum of three hundred thousand dollars, the second installment of payment, will in like manner be paid over to and received by the said Colville Indians, as well as the whole of the remainder of said sum of one million five hundred thousand dollars, set apart for the

benefit of the said Colville Indians, to plaintiff's irreparable harm and injury.

(7.) That under and by virtue of the said Act of Congress of June 21, 1906, said Butler and Vale (Marion Butler and Josiah M. Vale), defendants as aforesaid, duly entered suit No. 29526, in the United States Court of Claims, at Washington, District of Columbia, against the United States of America and the Indians residing on the Colville Reservation, for the amount of compensation which should be paid to the attorneys who had performed services as counsel on behalf of the said Colville Indians in the prosecution and collection of the claim of the said Colville Indians for pay-
43 ment for the said land "out of the said sum * * * set apart or appropriated for the benefit of said Indians," payment of said judgment to be in full compensation to all attorneys who had rendered service to said Indians in the matter of their said claim. That thereafter such proceedings were had in the said suit in the said Court of Claims that on May 25, 1908, the following order, judgment and decree were duly entered by said Court therein:

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that claimants be awarded judgment as follows:

Benjamin Miller, administrator of the estate of Levi Maish, deceased, the sum of six thousand dollars ($6,000).

Hugh H. Gordon, the sum of fourteen thousand dollars ($14,000).

Marion Butler, the sum of twenty thousand dollars ($20,000).

Josiah Vale, the sum of ten thousand dollars ($10,000).

Daniel B. Henderson, the sum of five thousand dollars ($5,000).

Heber J. May, the sum of three thousand dollars ($3,000).

Frederick C. Robertson, the sum of two thousand dollars ($2,000).

* * * * * * *

44 *Opinion.*

The court, after full consideration of the subject-matter, taking into account the attitude of and the valuable assistance rendered by the Department of the Interior, makes the following allowances:

To Benjamin Miller, administrator of the estate of Levi Maish, deceased	$6,000.
To Hugh H. Gordon	$14,000.
To Marion Butler	$20,000.
To Josiah Vale	$10,000.
To Daniel B. Henderson	$5,000.
To Heber J. May	$3,000.
To Frederick C. Robertson	$2,000.

Motion for new trial filed herein will be overruled and judgment awarded the claimants as set forth above. All other petitions and intervening petitions are dismissed.

May 25, 1908.

Which said findings, judgment, award and decree are about to be duly certified by the Court of Claims to the Treasury Department of the United States of America for payment in accordance with the aforesaid Act of Congress of June 21, 1906 adjudging the said claim of the said Colville Indians against the United States of America.

(9.) That in pursuance of the said Act of Congress of June 21, 1906, there was appropriated by an act of the Congress of the United States of America approved March 1, 1907, the sum of three hun-
dred thousand dollars ($300,000), as the first installment of
45 said sum of one million five hundred thousand dollars ($1,-
500,000), which said sum of three hundred thousand dollars ($300,000), has been duly paid to and received by the said Colville Indians; that there was appropriated by the said Act of Congress of the United States of America approved April 30, 1908, and is now in the Treasury of the United States the sum of three hundred thousand dollars ($300,000), as the second of five installments of payment for the said lands, of which last mentioned installment the sum of sixty thousand dollars ($60,000), is subject to be drawn therefrom in a lump sum to the order of or by said defendants Butler and Vale, or the sum of fourteen thousand dollars ($14,000), to the order of or by said defendant Gordon, and the sum of two thousand dollars ($2,000), to the order of or by said plaintiff Robertson, under the provisions of the said several acts of Congress hereinbefore recited, and by virtue of the findings, judgment, award and decree of the said Court of Claims duly entered as aforesaid on May 25, 1908, in the said case in the said court entitled Butler and Vale (Marion Butler and Josiah M. Vale), against the United States and the Indians residing on the Colville Reservation, No. 29526, and said withdrawals of three hundred thousand dollars ($300,000) by or for the said Colville Indians, and of sixty thousand dollars ($60,000), and of fourteen thousand dollars ($14,000), respectively by or for the parties to whom awarded in the above entitled suit is threatened and imminent, to the irreparable injury of this plaintiff unless the same shall be restrained and controlled by the order of this court.

(8.) That the services rendered by plaintiff and by said
46 defendant Gordon were extensive, laborious and important, and so recognized and adjudged by the said Court of Claims, which duly awarded to the said

Hugh H. Gordon	$14,000.
Frederick C. Robertson	2,000.
	$16,000,

as the value of their joint and several services to the said Colville Indians in securing the payment and collection of their said claim, to be directly taxed and paid by the said Colville Indians out of the sum and sums appropriated by Congress and set aside and held in the Treasury of the United States of America for the use and benefit of the said Colville Indians, but the said Court of Claims made no judgment, decree or division between the parties in respect of any agreements or contracts among themselves, as and for compensation for services or expenses rendered by one of said attorneys for, or jointly with another, and such matter of agreement, contract or division was not submitted to and was not before the said court, but was expressly disclaimed by the said court in its said decision, which adjudged only the claims and demands of the several attorneys directly against and for the benefit of the said Colville Indians, for which they were or would have been responsible under the said Maish-Gordon agreement, or the said Act of Congress of June 21, 1906, or otherwise by reason of valuable services actually rendered for them and their benefit, and against and payable directly out of the said fund in the Treasury of the United States; and plaintiff avers that he is entitled to share equally in the gross sum of

47 sixteen thousand dollars ($16,000), awarded to said defendant Gordon and himself in the proportion of eight thousand dollars ($8,000), to each, and to have repaid to him, said plaintiff, out of said defendant Gordon's undivided one-half share thereof, the further sum of one hundred and fifty dollars ($150), advanced by plaintiff to said defendant Gordon, as hereinabove set forth, that is to say, of the gross sum of sixteen thousand dollars ($16,000), aforesaid,

plaintiff is entitled to	$8,150.
and said defendant Gordon to	7,850.
	$16,000,

and plaintiff hereby offers to and does submit the said award standing in his own name as aforesaid, and the proceeds thereof and of any warrant, draft, cheque or other evidences of indebtedness issued in payment, or that may be issued in payment thereof, to the order, process and judgment of this court.

(9.) Plaintiff further represents and shows to the court that the said fund in the Treasury of the United States is a trust fund, so declared by the said Act of Congress of June 21, 1906, heretofore referred to, and that the said sum of sixty thousand dollars ($60,000), of said gross appropriation of three hundred thousand dollars ($300,000), is held as a part of such trust fund specifically charged with the claims of the attorneys who are parties hereto and others, upon which they jointly and severally have a lien by reason of the premises, and plaintiff, pursuant to the provisions of the said Act of Congress has notified the Secretaries of the Interior and of the Treasury of the United States of America of his claim and

48 lien upon the said fund, and specifically upon the portion thereof awarded to said defendant Gordon, and of his own

right and title to the part thereof hereinbefore set out, and that plaintiff may receive and draw the whole of said award and awards to which he claims to be entitled from the Treasury of the United States. Plaintiff further represents to the court and alleges the fact to be that unless the said defendants Butler, Vale and Gordon are restrained and enjoined from executing and delivering to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered the said Colville Indians in the matter of their said claim, and from receiving the said award and awards, and the said Secretary of the Treasury be restrained from paying the sum and sums of money so awarded by the said Court of Claims to the said defendants named, and the said Treasurer of the United States be restrained from issuing any warrant, draft, cheque or other evidence of indebtedness in payment of the same, and from paying any warrant, draft, cheque or other evidence of indebtedness issued by proper authority for the payment of the said award and awards, and the Secretary of the Interior be restrained from receiving said satisfaction and discharge aforesaid, and the said defendant Gordon be enjoined and restrained from assigning, transferring or encumbering the sum awarded to him as aforesaid, that the said award and awards will be paid to the said defendant Gordon, and to the said defendants Butler and Vale in pursuance of the award, judgment and decree of the said Court of Claims aforesaid, and the said sum so awarded to the said defendant Gordon, including plaintiff's
49 undivided interest and ownership therein may be assigned and encumbered by him, thereby occasioning and necessitating a multiplicity of suits to the great and irreparable loss and injury of plaintiff, for all which he will be remediless in a court of law. Copies of plaintiff's notices to and requests upon the said Secretaries of the Treasury and Interior and the Treasurer of the United States of America are annexed hereto and marked for identification Plaintiff's Exhibits A, B, and C, respectively.

(10.) That should defendant Gordon get possession and control of the said warrants, drafts, cheques or other evidences of indebtedness which may or might be issued in payment of the said claim and award, as plaintiff verily believes and so avers, he will leave the jurisdiction of this court with the same, or the cash proceeds thereof, and remove the same out of the jurisdiction and beyond the reach of the process of this court to the State of Florida, to the great and irreparable injury of plaintiff. That should the said defendant Gordon assign or transfer the sum so as aforesaid awarded to him in the judgment and decree of the said Court of Claims, or his claim thereto, a multiplicity of suits would thereby be necessitated to the like injury of plaintiff. That the said defendant Gordon has no property of any kind in the District of Columbia, and that a judgment at law against him would not be valuable, and that the money could not be made by execution or other process out of any known assets of the said defendant in the District of Columbia, as plaintiff is informed and believes, and so upon information and belief states. Plaintiff is uninformed whether said defendant Gor-
50 don has any financial standing, responsibility or property at the place of his residence in Florida or elsewhere, but upon

information and belief alleges that he has no property or means of any kind in the District of Columbia, and none elsewhere sufficient to meet and discharge the amount of the said award and awards, or the part thereof due and belonging to plaintiff by virtue of the premises. Plaintiff further avers that he has an equitable lien upon and an undivided interest and ownership in the said award and awards to said defendant Gordon and himself, and in and upon the proceeds thereof in said defendant Gordon's hands, and in the hands of the said defendants Butler and Vale to the use of said defendant Gordon, to the extent of one-half the gross sum awarded to both, to-wit: to eight thousand dollars ($8,000), and to the further sum of one hundred and fifty dollars ($150), so advanced as aforesaid to said defendant Gordon, making a total of eight thousand one hundred and fifty dollars ($8,150); and because he will be remediless in law, and the interposition of this Court of Equity is essential to prevent a multiplicity of suits and irreparable loss, injury and damage to him,

Wherefore, the premises considered, plaintiff prays:

(1.) That the said Hugh H. Gordon, Marion Butler and Josiah M. Vale, individually and as partners in the practice of the law under the firm name and style of Butler and Vale, George B. Cortelyou, Secretary of the Treasury, James R. Garfield, Secretary of the Interior, and Charles H. Treat, Treasurer of the United States of America, be made parties defendant to this Bill of Complaint,
51 and that the writ of subpœna of the United States of America may issue to them and each of them, commanding them and each of them to appear on a day certain and answer this Bill of Complaint, but without oath, all answers under oath being hereby expressly waived, and to stand and abide by such orders and decrees as the court may from time to time adjudge and enter in the premises.

(2.) That the said defendant Hugh H. Gordon, and his agents, attorneys, and representatives, and each of them, may be enjoined and restrained by the order of this court from applying for or receiving from the United States of America, or any officer of the United States, or from any person or persons, if in his or their possession, any warrant, draft, cheque, money or other evidences of indebtedness, or the proceeds of any warrant, draft, cheque, money or other evidences of indebtedness in settlement of the said award and awards to said defendant Gordon individually, or to or through the said defendants Butler and Vale, or either of them, and from transferring, assigning or encumbering the same pending the final determination of this cause; and that upon the final hearing herein the same may be made permanent.

(3.) That the said defendants Marion Butler and Josiah M. Vale, individually and as partners aforesaid, and their and each of their agents, attorneys and representatives may be enjoined and restrained by the order of this court from collecting or receiving from the United States of America, or any officer thereof, or from any person having the same in possession, and from paying to or deliver-
52 ing to the said defendant Gordon, or to any person for him or for his account, or to any other person, any warrant, draft,

cheque or evidence of indebtedness or the proceeds of any warrant, cheque, draft or evidence of indebtedness issued in settlement of the said award and awards to said defendant Gordon or to plaintiff, except as may be directed by this court.

(4.) That the said defendant George B. Cortelyou, Secretary of the Treasury of the United States, may be enjoined and restrained by the order of this court from paying to the said defendants Gordon, Butler and Vale, and to any other person or persons any sum of money in settlement of the said award to the said defendant Gordon, and from signing, approving or allowing any warrant, draft, cheque or other evidence of indebtedness to any one in settlement of the same, and from paying out to any one any portion of the said sum of sixteen thousand dollars ($16,000), the subject matter of this suit, except as may be directed by this court in furtherance of the objects of this bill.

(5.) That the said defendant James R. Garfield, Secretary of the Interior of the United States may be enjoined and restrained by the order of this court from receiving from the said defendants Gordon, Butler and Vale, and from any other person or persons, a satisfaction or discharge of all or any claim and demand for services rendered to the said Colville Indians in the matter of their said claim hereinabove set forth, except as may be directed by this court.

(6.) That the said defendant Charles H. Treat, Treasurer
53 of the United States may be enjoined and restrained by the order of this court from issuing or delivering to the said defendants Gordon, Butler and Vale, and to any other person or persons, any warrant, draft, cheque, or other evidence of indebtedness or money in settlement of the said award to the said defendant Gordon, except as may be specifically ordered by the court in furtherance of the objects of this suit.

(7.) That the said defendants Marion Butler and Josiah M. Vale, individually and as co-partners in law under the firm name and style of Butler and Vale may by the order and decree of this court be adjudged to have no title or interest in or to any part of the sum and sums so as aforesaid awarded to plaintiff and to said defendant Gordon, and that they and each of them may be ordered to do and perform any and all acts proper and necessary to enable the same to be transferred to, deposited in and duly distributed by this court as herein prayed, and further abide the order of the court in the premises.

(8.) That a receiver or receivers may be appointed by this court, according to the usage, practice and rules thereof, to collect, take and receive from the Treasurer of the United States of America, and from any officer or person having custody thereof the amount of said award or awards, or any warrant, draft, cheque or money derived from any warrant, draft, cheque or other evidence of indebtedness issued or to be issued by the United States in payment and settlement of the said award and awards to the said defendant Hugh H. Gordon, and to the said defendants Marion Butler and Josiah M. Vale to the use
54 of the said defendant Gordon, and to plaintiff, and either and all of them, and to dispose of and account for said warrant or

warrants, draft or drafts, cheque or cheques, evidences of indebtedness or money, as this court may hereinafter direct.

(9.) That plaintiff may be adjudged to have a just and equitable lien upon and interest and ownership in the said awards to himself and to said defendant Gordon, and in and to the fund derived or to be derived from any warrant, draft, cheque or other evidence of indebtedness issued or to be issued in payment of the said award and awards to the extent of eight thousand one hundred and fifty dollars ($8,150), and to the like extent upon the aforesaid trust fund in the Treasury of the United States subject to the payment of said award and awards, and that the receiver or receivers hereafter to be appointed by this court be directed, after the payment of the costs of this suit to pay the said sum of eight thousand one hundred and fifty dollars ($8,150), to plaintiff, and to distribute and pay out the balance of the said fund as to equity and good conscience may seem fit, and this court may order and direct.

(10.) And plaintiff prays for such other and further relief as shall be meet and agreeable to equity, and for costs of suit.

F. C. ROBERTSON, *Plaintiff.*

GEO. H. PATRICK,
Solicitors for Plaintiff.

55 UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I, Frederick C. Robertson, the plaintiff therein, do solemnly swear that I have read the foregoing Bill of Complaint by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

FREDERICK C. ROBERTSON.

Subscribed and sworn to before me, by Frederick C. Robertson, to me well known, at Spokane, Washington, this 15th day of August, in the year of our Lord one thousand nine hundred and eight.

[SEAL.] J. W. MARSHALL,
United States Commissioner in and for the Eastern District of Washington, Duly Appointed, Qualified, and Acting.

56 PLAINTIFF'S EXHIBIT "A."

Copy.

SPOKANE, WASHINGTON, *August 15th*, 1908.

SIR: You will please take notice of my claim and lien upon the fund set aside and held in the Treasury of the United States for the benefit of the Indians residing on the Colville Reservation, in the State of Washington, created by the Act of Congress of June 21, 1906 (34 Stats., 325), in payment for one million five hundred thousand acres of land opened to settlement by the Act of July 1st,

1892, particularly upon the sums of $60,000 awarded by the judgment and decree of the Court of Claims under date May 25, 1908, in the suit No. 29526, entitled Marion Butler and Josiah M. Vale (Butler and Vale), against the United States and the Indians residing on the Colville Reservation, to the attorneys who had performed services as counsel on behalf of the said Indians in the prosecution of their claims for payment for the said land and upon the sum of $14,000 awarded specifically to Hugh H. Gordon, and of $2,000 awarded specifically to Frederick C. Robertson, the undersigned,—to the extent of $8,150 upon all said sum and sums; and I hereby apply to receive and draw the whole of said award and awards to which I hereby claim to be entitled, and notify you to refuse to permit any other person or persons to receive or draw from the Treasury any part of the sum and sums so as aforesaid claimed by me, unless and except as may be directed by the order of the Supreme Court of the District of Columbia, in proceedings duly instituted therein, or this notice and request shall be withdrawn agreeably to the parties.

57

Very respectfully,

FREDERICK C. ROBERTSON, *Claimant.*

Hon. George B. Cortelyou, Secretary of the Treasury, Washington, D. C.

58 PLAINTIFF'S EXHIBIT "B."

Copy.

SPOKAKE, WASHINGTON, *August 15th*, 1908.

SIR: You will please take notice of my claim and lien upon the fund set aside and held in the Treasury of the United States for the benefit of the Indians residing on the Colville Reservation, in the State of Washington, created by the Act of Congress of June 21, 1906 (34 Stats., 325), in payment for one million five hundred thousand acres of land opened to settlement by the Act of July 1st, 1892, particularly upon the sums of $60,000 awarded by the judgment and decree of the Court of Claims, under date May 25, 1908, in the suit No. 29526, entitled Marion Butler and Josiah M. Vale (Butler and Vale), against the United States and the Indians residing on the Colville Reservation, to the attorneys who had performed services as counsel on behalf of the said Indians in the prosecution of their claims for payment for the said land and upon the sum of $14,000 awarded specifically to Hugh H. Gordon, and of $2,000 awarded specifically to Frederick C. Robertson, the undersigned,—to the extent of $8,150 upon all said sum and sums; and I hereby apply to receive and draw the whole of said award and awards to which I hereby claim to be entitled, and notify you to refuse to permit any other person or persons to receive or draw from the Treasury any part of the sum and sums so as aforesaid claimed by me, and further I request you to receive from me a satisfaction and discharge of all and any claim and demand for services rendered to the said Colville Indians in the matter of their said claim, and

59

to refuse to receive such satisfaction and discharge as to the sum and sums awarded to the said Gordon and myself, as aforesaid, from any other person or persons, unless and except as may be directed by the order of the Supreme Court of the District of Columbia, in proceedings duly instituted therein, or this notice and request shall be withdrawn agreeably to the parties.

Very respectfully,

FREDERICK C. ROBERTSON, *Claimant.*

Hon. James R. Garfield, Secretary of the Interior, Washington, D. C.

60 PLAINTIFF'S EXHIBIT "C."

Copy.

SPOKAKE, WASHINGTON, *August 15th,* 1908.

SIR: You will please take notice of my claim and lien upon the fund set aside and held in the Treasury of the United States for the benefit of the Indians residing on the Colville Reservation, in the State of Washington, created by the Act of Congress of June 21, 1906 (34 Stats., 325), in payment of one million five hundred thousand acres of land opened to settlement by the Act of July 1st, 1892, particularly upon the sums of $60,000 awarded by the judgment and decree of the Court of Claims under date May 25, 1908, in the suit No. 29526, entitled Marion Butler and Josiah M. Vale (Butler and Vale), against the United States and the Indians residing on the Colville Reservation, to the attorneys who had performed services as counsel on behalf of the said Indians in the prosecution of their claims for payment for the said land and upon the sum of $14,000 awarded specifically to Hugh H. Gordon, and of $2,000 awarded specifically to Frederick C. Robertson, the undersigned,—to the extent of $8,150 upon all said sum and sums; and I hereby apply to receive and draw the whole of said award and awards to which I hereby claim to be entitled, and notify you to refuse to permit any other person or persons to receive or draw from the Treasury any part of the sum and sums so as aforesaid claimed by me, and further notify you not to issue or deliver to said Gordon, or to said
61 Butler and Vale to his use, or to any other person or persons, any warrant, draft, cheque, or other evidence of indebtedness or money in settlement of the said award to said Gordon, or to myself, unless and except as may be ordered and directed by the order of the Supreme Court of the District of Columbia, in proceedings duly instituted therein, or this notice and request shall be withdrawn agreeably to the parties.

Very respectfully,

FREDERICK C. ROBERTSON, *Claimant.*

Hon. Charles H. Treat, Treasurer, of the United States of America, Washington.

62 *Subpœna to Answer.*

Issued August 26, 1908.

In the Supreme Court of the District of Columbia.

No. 28006. Equity Docket.

FREDERICK C. ROBERTSON, Complainant,
against
HUGH H. GORDON, MARION BUTLER, JOSIAH M. VALE (Butler and Vale), George B. Cortelyou, Secretary of the Treasury; James R. Garfield, Secretary of the Interior; Charles H. Treat, Treasurer of the United States of America, Defendants.

The President of the United States to Hugh H. Gordon, Marion Butler, Josiah M. Vale (Butler and Vale), George B. Cortelyou, Secretary of the Treasurer; James R. Garfield, Secretary of the Interior; Charles H. Treat, Treasurer of the United States of America, Defendants:

You are hereby commanded to appear in this Court, at its first Special Term, occurring ten days after service of this subpœna, exclusive of Sundays and legal holidays and answer the exigency of the plaintiff's Bill, under pain of attachment, and such other process of contempt as the Court shall award.

Witness, the Honorable Harry M. Clabaugh, Chief Justice
63 of said Court, the 26″ day of August, A. D. 1908.

[SEAL.] JOHN R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM,
Assistant Clerk.

MEMORANDUM.—That the defendants, herewith served, are to enter their appearance in this suit, in the Clerk's Office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Restraining Order

Upon the Complainant Filing Undertaking as Required by Equity Rule 42.

The Defendants are hereby restrained as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 28th day of August, 1908, of which take notice.

By the Court:

WENDELL P. STAFFORD, *Justice.*

Marshal's Return.

Summoned defendants and served each of them with a copy of the restraining order in this cause as follows:

Hugh H. Gordon, Charles H. Treat, Treasurer of U. S. personally.

George B. Cortelyou, Secretary of the Treasury by service
64 on Beekman Winthrop acting Secretary, James R. Garfield, Secretary of the Interior by service on Jesse E. Wilson acting Secretary Aug. 26, 1908.

Josiah M. Vale personally Aug. 27, 1908.

Marion Butler personally Aug. 28, 1908.

AULICK PALMER, *Marshal.*
H.

Bill.

Filed August 26, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28005.

RICHARD D. GWYDIR, J. W. EDWARDS, and WENDELL HALL, Complainants,

vs.

CHARLES H. TREAT, Treasurer of the United States; HUGH H. Gordon, and Benjamin Miller, Administrator of the Estate of Levi Maish, Deceased, Defendants.

To the Honorable the Judges of the Supreme Court of the District of Columbia, Holding an Equity Court:

The Bill of Complaint of Richard D. Gwydir, J. W. Ed-
65 wards and Wendell Hall, respectfully shows, that they are all citizens of the United States and residents of the State of Washington, and exhibit this bill of complaint in their own right.

2. That the defendant, Charles H. Treat is a citizen of the United States and the Treasurer thereof, and is sued as such Treasurer of the United States. That the defendant Hugh H. Gordon is a citizen of the United States, and a resident of the State of Florida and is sued in his individual capacity. That the defendant Benjamin Miller, is a citizen of the United States, a resident of the District of Columbia, and is sued as the administrator of the personal estate of Levi Maish, deceased.

3. That the Indians occupying the Colville Indian Reservation in the State of Washington, and commonly known as the Colville Indians, on the 9th day of May, 1891, were possessed of and occupied the north half of the said reservation, and on that day entered into an agreement with the United States Government by which they

ceded the north half of their said reservation, in consideration, among other things, of the promise that the United States would pay them $1,500,000 therefor; that the said United States on its part accepted said cession and opened up to white settlement said north half of said Colville reservation, but refused to carry out its promise and pay said $1,500,000 to said Indians; that on the 12th day of May, 1894, the said Colville Indians entered into a contract in writing with Levi Maish and Hugh H. Gordon, who were then practicing law in the city of Washington under the firm
66 name of Maish & Gordon, whereby said Maish & Gordon undertook the prosecution of said Indian claim for a fee of fifteen (15%) per centum of the amount recovered; that said contract was in due form of law and was approved by the Secretary of the Interior and Commissioner of Indian Affairs, who, however, reduced the amount of compensation to be paid to said Maish and Gordon from fifteen per centum to ten per centum.

4. That your complainants were the chief instruments in procuring the contract between said Colville Indians and said Maish & Gordon, the efficacy of their endeavors in that behalf never having been disputed by said Maish and Gordon, and therefore, your complainants and said Maish & Gordon, on the 15th day of June, 1894, by their contract under seal, entered into the following agreement with reference to the compensation which your complainants were to receive for their said services:

Contract.

"Richard D. Gwydir, J. W. Edwards and Wendell Hall, of the first part, and Levi Maish and Hugh H. Gordon, of the second part.

Whereas R. D. Gwydir, J. W. Edwards and Wendell Hall, have heretofore, at our instance, request and upon our agreement to compensate them therefor, rendered services to Levi Maish and Hugh H. Gordon, the undersigned, in attending to the signing and execution of a contract between said Maish & Gordon and the Indians resident on the Colville Reservation in the State of Washing-
67 ton, by which contract said Maish & Gordon are made the sole attorneys of said Indians, to prosecute their claim against the United States for the sum of one million five hundred thousand dollars ($1,500,000), which is claimed to be due said Indians under the treaty and agreement entered into between the United States and the said Indians on the 9th day of May, 1891.

We do hereby agree in consideration of said services to pay to said parties out of the fee to be paid us for the collection of said claim, when the same may or shall be recovered thirty thousand dollars ($30,000), ten thousand dollars ($10,000) to each of said parties, Gwydir, Edwards and Hall.

Provided that we recover the total amount of said claim, and are ourselves paid a fee of fifteen per cent upon the entire claim of one million five hundred thousand dollars ($1,500,000). It is, however, distinctly understood and agreed that in case we do not collect the full amount of said claim of one million five hundred thousand

dollars ($1,500,000), or in case the commission paid us as attorneys for said Indians is reduced below fifteen per cent, then the amount paid to the said Gwydir, Edwards and Hall shall be reduced in the same proportion. In other words, we agree to pay said Gwydir, Edwards and Hall jointly in a fee amounting in the aggregate to six forty-fifths (6/45) of the fee or commission actually paid to us. This six forty-fifths (6/45) part of the fee to be divided equally between the said Gwydir, Edwards and Hall.

68 Witness our hands and seals this 15th day of June, A. D. 1894.

R. D. GWYDIR. [SEAL.]
J. W. EDWARDS. [SEAL.]
WENDELL HALL. [SEAL.]
LEVI MAISH. [SEAL.]
HUGH H. GORDON. [SEAL.]

5. That thereafter the Congress of the United States did appropriate the entire sum of one million five hundred thousand dollars to said Indians, and upon the passage of said act there would have been due to said Maish & Gordon the sum of $150,000, of which sum your complainants would have been entitled to six forty-fifths thereof, under their contract just above recited, but for the fact that said Act of Congress making said appropriation of $1,500,000 to said Colville Indians, invested the Court of Claims with jurisdiction to fix the amount of the compensation of the attorneys engaged in the prosecution of their claim, authorizing said court in determining said compensation, to consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them.

6. And your complainants further show that on or about the 26th day of February, 1899, the said Levi Maish departed this life, leaving the said Hugh H. Gordon, his surviving partner of the firm of Maish & Gordon, and that on the 17th day of March, 1899, the defendant, Benjamin Miller, was appointed by the Supreme Court of the District of Columbia, holding a Probate Court, administrator of the personal estate of said Levi Maish, deceased.

69 7. Your complainants further allege that on the 25th day of May, A. D. 1908, said Court of Claims, in accordance with said provision of the Act of Congress hereinbefore referred to, by its decree, awarded to said Maish & Gordon the sum of twenty thousand dollars ($20,000) in full for said firm's compensation for services rendered said Colville Indians in the premises, in said decree dividing said sum of $20,000, however, into two sums, to-wit, $6000, which it awarded to Benjamin Miller, one of the defendants herein, administrator of Levi Maish, the deceased partner, and $14,000 which it awarded to the defendant herein, Hugh H. Gordon.

8. And your complainants further allege that under the terms of their said contract of June 15th, A. D. 1894, they are entitled to have, of right, an equitable lien upon said sum of $20,000, so awarded to said Maish & Gordon by the decree of the Court of Claims, to the extent of six forty-fifths of said sum.

9. That notwithstanding the rights of your complainants in the

premises, since the passage of the said decree by said Court of Claims, both the said Hugh H. Gordon and Benjamin Miller, administrator, have denied and still do deny any right in your complainants to participate in said allowance or to have any interest therein, and your complainants are informed and believe, and therefore allege that it is the purpose of the said Hugh H. Gordon, and Benjamin Miller, administrator, to demand the delivery to them by the defendant,

Charles H. Treat, Treasurer of the United States, of the
70 Treasury warrants for the payment of said sums of fourteen thousand dollars and six thousand dollars, respectively, in utter disregard of the rights of your complainant, under their said contract, and their equitable lien created upon said funds thereby.

10. Your complainants further allege that the said Hugh H. Gordon is a non-resident of the District of Columbia and has no property within the jurisdiction of this court, and that unless restrained and prevented by the writ of injunction to be issued out of this honorable court, the defendant, Hugh H. Gordon, and Benjamin Miller, administrator will demand of their co-defendant, Charles H. Treat, Treasurer of the United States, the delivery to them of the Treasury warrants for the said sums of $14,000 and $6000, respectively, and the said Charles H. Treat will surrender the same to his said co-defendants, whereby the lien upon said funds and said warrants to which your complainants are entitled will be utterly destroyed and your complainants will be left without remedy in the premises.

Prayers.

In Consideration of the premises the complainants pray:

1st. That the writ of subpœna may issue out of this honorable court directed against the said Charles H. Treat, Treasurer of the United States, Hugh H. Gordon and Benjamin Miller, administrator of the personal estate of Levi Maish, deceased, commanding them and each of them, to appear in this honorable court upon some certain day to be named therein, to answer the premises (though
71 not under oath) answer under oath being hereby expressly waived, and to abide by and perform such orders or decrees as may be herein passed.

2nd. And that the writ of injunction may also issue out of this honorable court enjoining and strictly prohibiting the said Hugh H. Gordon and Benjamin Miller, administrator of the estate of Levi Maish, deceased, from asking, demanding or receiving from the said Charles H. Treat, Treasurer as aforesaid, either the said sum of $14,000, or the said sum of $6000, mentioned in said decree of the Court of Claims, or any warrant or other writing or writings therefor; and also enjoining and strictly prohibiting the said Charles H. Treat, Treasurer of the United States, or anyone on his behalf from paying either of said sums of $14,000 or $6000, respectively to the said Hugh H. Gordon or Benjamin Miller, administrator of the personal estate of said Levi Maish deceased, or delivering any warrant or other instrument of writing for the payment thereof to said Hugh

H. Gordon or Benjamin Miller, administrator as aforesaid, until the further order of this court.

3rd. And that a receiver may be appointed by this honorable court, to ask, demand and receive from the said Charles H. Treat, Treasurer of the United States, the said sums of $14,000 and $6000 respectively, or the warrant or warrants representing the same, and to hold the same until the further order of this court.

4th. And that this court by its decree may adjudge that your complainants are entitled to six forty-fifths (6/45) of said sum of $20,000, so awarded by said Court of Claims to said defendant, Miller, administrator and Gordon.

72 5th. And that your complainants may have such other and further relief as their case may require and this honorable court may be competent to decree.

The defendants to this bill are Charles H. Treat, Treasurer of the United States: Hugh H. Gordon, Benjamin Miller administrator of the personal estate of Levi Maish, deceased.

RICHARD D. GWYDIR,
J. W. EDWARDS,
WENDELL HALL,
By STROTHER M. STOCKSLAGER,
Their Att'y.

CHAS. POE,
FRANK D. BLACKISTONE,
Solicitors for Complainants.

DISTRICT OF COLUMBIA:

Strother M. Stockslager, being first duly sworn upon oath says that he is the agent and attorney of the complainants to the above bill of complaint who are citizens and residents of the State of Washington, and are now not within the jurisdiction of the District of Columbia, and that he is authorized to make oath to this bill of complaint, and is familiar with the facts alleged therein; that he has read the foregoing bill of complaint by him subscribed and knows the contents thereof, and hath personal knowledge of the facts contained therein; that the matters and things therein stated upon his own knowledge are true, and those things stated upon information and belief he believes to be true.

STROTHER M. STOCKSLAGER.

73 Subscribed and sworn to before me this 26th day of August A. D. 1908.

[SEAL.] WM. B. MATTHEWS, JR.,
Notary Public, D. C.

Opinion.

Filed October 29, 1908.

In the Supreme Court of the District of Columbia.

No. 28,005. Equity.

RICHARD D. GWYDIR et al.
v.
CHARLES H. TREAT et al.

In this case the complainants have filed a bill, praying for an injunction and a receiver, in order that they may obtain payment on a contract made by them with the defendant, Hugh H. Gordon, and one Levi Maish, now deceased, his administrator, Benjamin Miller, being made a party defendant herein. The defendant, Charles H. Treat, Treasurer of the United States, is made a party defendant, because the payment, which it is claimed is about to be made to the defendants Gordon and Miller, is to be made by a check or warrant by said Treasurer.

The contract set out in the bill is dated June 15, 1894, and by its terms the said Levi Maish and Hugh H. Gordon agreed to pay to the complainants $10,000 each, provided they should recover the total amount of a certain claim in behalf of the Colville Indians in
74 the State of Washington, aggregating one million five hundred thousand dollars, and should receive for their services a fee of fifteen per cent upon the entire claim.

The contract then has this provision:

"It is, however, distinctly understood and agreed that in case we do not collect the full amount of said claim of one million five hundred thousand dollars, or in case the commission paid us as attorneys for said Indians is reduced below fifteen per cent, then the amount to be paid to the said Gwydir, Edwards, and Hall shall be reduced in the same proportion. In other words, we agree to pay said Gwydir, Edwards, and Hall jointly in a fee amounting in the aggregate to six forty-fifths of the fee or commission actually paid to us, this six forty-fifths part of the fee to be divided equally between the said Gwydir, Edwards, and Hall."

The said contract in the introductory part recites that the said complainants had before said date, at the instance and request of the said Maish and Gordon, rendered services to them in attending to the signing and execution of a contract between said Maish and Gordon and the Indians resident on the Colville reservation, and the said contract with the complainants was made in consideration of said services.

The said contract of Maish and Gordon with the said Indians, by which they became the sole attorneys of said Indians in the prosecution of said claim, was limited to a period of ten years; and said

contract was approved by the Commissioner of Indian Affairs
75 and the Secretary of the Interior, as required by the rule in such cases, but on condition, however, that the said attorneys should accept as full compensation for services to be rendered thereunder, the sum of ten per cent of the amount or amounts to be recovered, instead of the fifteen per cent as therein provided.

The said Maish and Gordon failed to realize on their claim during the lifetime of their said contract, although they did render valuable services in the matter during that time. But before as well as after the expiration of said contract, other counsel came into the case, and Congress, having appropriated the amount due to said Indians, a question arose as to the compensation that the said Maish and Gordon, and other attorneys engaged in the prosecution of the claim, should be entitled to receive; and so, June 21, 1906, (34 Stat. L., 377), in the same act making the appropriation, jurisdiction was conferred upon the Court of Claims to hear, determine, and render final judgment, for the amount of compensation to be paid to the attorneys who had performed services as counsel on behalf of said Indians, in the prosecution of the claim of said Indians for payment for said land; and in determining the amount of compensation for such services, the court was authorized to consider all contracts or agreements theretofore entered into by said Indians with attorneys who had represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim.

The suit in which this was to be determined was to be brought in
the name of Butler and Vale, who came into the case in 1903,
76 or subsequent thereto. Messrs. Butler and Vale filed a petition in the Court of Claims, being No. 29,526, and that court heard the various claims for attorney's fees, and gave judgment for the sum of $60,000 in the aggregate, $6,000 of which was awarded to Benjamin Miller administrator of the estate of Levi Maish deceased, and $14,000 to the defendant, Hugh H. Gordon.

In that suit the complainants herein presented their claim, which was denied by the Court of Claims, that court holding that they had no claim against the said Colville Indians.

In the finding of facts, the Court of Claims found that the said contract now brought into this cause, was executed by and between the complainants herein, and the said Maish and Gordon; but they say that it does not appear that said contract was ever presented to or approved by the Secretary of the Interior. They also found that the complainants herein rendered certain services to said Maish and Gordon, in procuring signatures of the Indians to the contract of May 12th, 1894; but they say it does not appear that the said complainants rendered service to the Indians.

Under the act conferring the jurisdiction on the Court of Claims, and under this finding of fact, there was nothing for that court to do but to dismiss the petition of the complainants herein, because the act gave them no jurisdiction to determine any question of indebtedness between the complainants and the said Maish and Gordon, for services rendered by the complainants to said Maish and Gordon;

but only authorized them to determine the compensation that
77 should be paid to attorneys who had performed services as
counsel on behalf of the Indians, and it related only to contracts entered into by said Indians with attorneys, and also to services rendered by attorneys for the Indians.

The defendants, Hugh H. Gordon, and Benjamin Miller, as administrator of Levi Maish, deceased, have filed a joint and separate answer to the complainants' bill, in which they admit the execution of the two contracts above-mentioned, and they admit the death of Levi Maish, and that defendant Miller is his representative. They admit the award of $14,000 to Gordon, and $6,000 to Maish; but they deny that the complainants have any lien on said fund, or any right to be paid anything by the defendants, by reason of their said contract.

They claim in said answer, that their contract with the Indians expired on July 25, 1904, and that the right of complainants to compensation depended wholly on that contract; and that their claim for compensation, on which the Court of Claims had awarded them the said several sums, was not based on the said ten year contract, which had expired, but was based on a *quantum meruit* under the terms of the jurisdictional act aforesaid; and they claim that they are in no ways bound to recognize the complainants under that legislation and award; and they further claim, in their answer, that the dismissal of the petition filed by complainants in the Court of Claims, by that court, was an adjudication that they were entitled to nothing, and that the same was *res judicata,* and for that reason
the complainants have no standing in this court.

78 The case was set down for hearing on bill and answer,
and the question is, shall this court assist the complainants by a receiver and injunction, or otherwise, to compel the said Gordon and Miller to recognize the contract of the complainants, and to pay them six forty-fifths of the amount of fee to be received by them for their services in behalf of said Indians?

It does not appear that Maish and Gordon, or either of them, performed any services in behalf of the said Indians, after the expiration of their contract, July 25, 1904. It must then be presumed from this record that the services for which the allowance of $20,000 has been made, were performed in accordance with and during the life of the said contract. If this is so, then, notwithstanding the expiration of the time in which Messrs. Maish and Gordon were to be the sole attorneys for the said Indians, the court must have recognized the contract as the foundation of their claim, because it was to consider "all contracts or agreements heretofore entered into by said Indians with attorneys;" so that whether the contract had expired or not, was of no consequence in determining the value of the services performed under the contract, and awarding compensation to the attorneys.

There is no limit, however, in the contract made by the complainants with the said Maish and Gordon. The time of payment fixed by that contract would seem to depend on the time of recovery of

their own compensation from the Indians, the language of the contract being in that respect as follows:

79 "We do hereby agree, in consideration of said services, to pay to said parties, out of the fee to be paid us for the collection of said claim, when the same may or shall be recovered," etc.

The fact that the contract between the complainants and the said Maish and Gordon was not approved by the Secretary of the Interior, or the Commissioner of Indian Affairs, does not seem to be material, because it was not a contract in which the United States or the Indians had any interest. Being a contract between private individuals, the only question which seems material to determine, is the question as to whether there was an equitable assignment of a portion of the fund which the said Maish and Gordon were to receive, or whether complainants have an equitable lien on said fund, and to determine if that assignment, or lien, can be enforced in this jurisdiction, under the facts of this case.

The amount of complainants' claim was clearly fixed at six forty-fifths of the fee which the said Maish and Gordon were to receive for their services in behalf of the said Indians; and said Maish and Gordon agreed, in consideration of the services contributed by the complainants, to pay to said parties, out of their fees, the said six forty-fifths part, when their fees were recovered.

My attention has not been called to any case changing the principles announced by the Court of Appeals in the case of Sanborn v. Maxwell, 18 Appeals D. C., 245, which was a case substantially like the present.

The Court said in that case:

80 "The agreement alleged in the bill, substantially to the effect that complainants' fees for services should be satisfied out of the proceeds of defendant's claim in controversy, and constitute an interest therein to that extent, created a charge enforceable as an equitable assignment or lien."

This holding was supported by the authorities cited, to wit,

Dexter v. Gordon, 11 Appeals D. C., 60,
Hutchinson v. Worthington, 7 Appeals D. C., 548,
Fourth Street Bank v. Yardly, 165 U. S. 634, and
Walker v. Brown, 165 U. S., 654.

The contract of the complainants with the said Maish and Gordon, could not have been the foundation in the Court of Claims of any award which could have been paid from the money belonging to the said Colville Indians. That court had no jurisdiction over them, as to said claim, notwithstanding their voluntary appearance, and petition for payment out of the fund due to the said Indians. The court could not take jurisdiction of the subject matter of a suit over which it had no power, by the consent of the applicants for relief. Its determination, therefore, does not become *res judicata* as between the complainants and the said Maish and Gordon, because there was no authority in that court to determine their rights as between themselves.

My conclusion is that the complainants have an equitable lien

on the fund in question by reason of the facts admitted in
81 this cause, which the court ought to enforce by injunction and receiver, and I will sign an order in accordance with this opinion.

JOB BARNARD, *Justice.*

Order Consolidating Causes, &c.

Filed November 2, 1908.

In the Supreme Court of the District of Columbia, Holding in Equity.

(No. 28000.)

INDIAN PROTECTIVE ASSOCIATION, Plaintiff,
against
CHARLES H. TREAT, Treasurer of the United States; HUGH H. Gordon, Benjamin Miller, Administrator of the Estate of Levi Maish, Deceased, Defendants.

(No. 28005.)

RICHARD D. GWYDIR, J. W. EDWARDS, WENDELL HALL, Plaintiffs,
against
CHARLES H. TREAT, Treasurer of the United States; HUGH H. Gordon, Benjamin Miller, Administrator of the Estate of Levi Maish, Deceased, Defendants.

(No. 28006.)

FREDERICK C. ROBERTSON, Plaintiff,
against
HUGH H. GORDON, MARION BUTLER, and JOSIAH M. VALE, Individually and as Partners under the Firm Name and Style of Butler and Vale; George B. Cortelyou, Secretary of the Treasury; James R. Garfield, Secretary of the Interior; Charles H. Treat, Treasurer of the United States of America, Defendants.

It being suggested to the Court by Daniel W. Baker, Es-
82 quire, Attorney of the United States of America, solicitor for defendants common to all the above entitled causes, that the said causes are of a like nature and relative to the same questions, and are now pending in this court;

Upon his motion, Messrs. Charles Poe and George H. Patrick, solicitors respectively for the plaintiffs in all said causes being present and assenting thereto, and the matter being understood by the Court, to avoid costs and delay in the administration of justice, and in the interest of equitable proceedings conformably to the usages of the court, the same appearing reasonable, on this second day of November, one thousand nine hundred and eight,

It is ordered, That the said several causes set out in the caption hereof be and they hereby are consolidated into one cause to be considered and heard under the number 28005.

It is further ordered, upon motion of George H. Patrick, solicitor for Frederick C. Robertson, plaintiff in cause No. 28006, original, that Charles Poe, James B. Archer and Nathaniel S. Faucett, be and they hereby are appointed receivers of this Court in the said cause, as consolidated, with full power and authority to demand and receive from the United States of America, or the Treasurer thereof, the sum of twenty-two thousand dollars, to-wit: the several sums of fourteen thousand dollars ($14,000), awarded to Hugh H. Gordon, six thousand dollars ($6,000), awarded to Benjamin Miller, administrator of Levi Maish, deceased, and two thousand dollars ($2,000),
awarded to Frederick C. Robertson, by the judgment and
83 decree of the Court of Claims of the United States of America,
on March 25, 1908, in the case entitled Butler and Vale (Marion Butler and Josiah M. Vale) against the United States and the Indians residing on the Colville Reservation, No. 29526, in the said court.

It is further ordered, That the title to the said sum and sums of money is hereby vested in the said receivers, for the benefit of whomsoever the Court shall hereafter adjudge entitled to the same; and the said receivers are also authorized and directed to receive from the United States of America, or the Treasurer thereof, or any other officer authorized to deliver the same, any and all cheques, drafts, warrants, or other evidences of indebtedness issued or to be issued in payment of the said sum and sums of money, and any and all sum and sums of money due and to be paid in settlement and satisfaction of said award and awards as aforesaid.

It is further ordered, That before demanding or receiving the said sum and sums of money, cheques, drafts, warrants, or other evidences of indebtedness, or any part thereof, the said receivers shall give a bond payable to the United States of America, in the penal sum of twenty-five thousand dollars ($25,000), conditioned for the faithful discharge of their duties as such receivers under this and all further orders of this Court to be made in this cause as consolidated.

It is further ordered, That upon the payment of the said money to the said Receivers, the said bills in Equity No. 28005, No. 28000, and No. 28006, shall stand dismissed as to the defendant Charles H. Treat,
Treasurer of the United States, and the said bill in Equity No.
84 28006 shall stand dismissed as to the defendants George B.
Cortelyou, Secretary of the Treasury and James R. Garfield, Secretary of the Interior, the same being without costs to any of the said defendants.

JOB BARNARD, *Justice.*

Opinion of Court of Claims.

Filed November 3, 1908.

* * * * * * *

BOOTH, *J.*, delivered the opinion of the court:

This is a suit under a special jurisdictional act to recover attorney fees. The services alleged were performed in the prosecution of the claim of the Colville Indians against the United States, and were confined exclusively to the committees of Congress. The Colville Indians occupied a reservation set aside to them by Executive order in the northeastern part of the State of Washington. By an Act of Congress approved August 19, 1890 (26 Stat. L., 355), the President appointed a commission to treat with said Indians respecting the cession of a portion of said reservation to the United States. On May 9, 1891, the commission consummated an agreement with the Indians; it provided for the cession of the entire north half of their reservation to the United States. The area of lands so ceded was estimated
85 at 1,500,000 acres, and as a part consideration therefor the United States agreed to place as a trust fund to their credit in the Treasury the sum of $1,500,000, bearing interest annually at the rate of 5 per cent.

In pursuance of the above agreement the lands so ceded were by act of Congress thrown open to public settlement; but no appropriation of money was made, and that part of the agreement providing for its payment was never complied with until the passage of the act of June 21, 1906. The Indians became anxious, and justly, quite solicitous. Their appeals to the Congress subsequent to their agreement was met in 1892 by an adverse report from the Senate Committee on Indian Affairs, in which their right to compensation as per agreement was directly challenged by a most positive denial of their title to the lands in question.

In May, 1894, the said Colville Indians entered into a contract with Levi Maish, of Pennsylvania, and Hugh H. Gordon, of Georgia, attorneys and counselors at law, by the terms of which the said attorneys were to prosecute their said claim against the United States and receive as compensation therefor 15 per cent of whatever amount they might recover. This contract was subsequently approved for 10 per cent, as the law required, by the Secretary of the Interior, and extended for a period of ten years only. It is the sole and only contract ever executed by said Indians respecting said claim. It is likewise the only legal authority whereby any attorney appeared for said Indians during its operation; in fact, all with the possible exception of two claimants herein rendered services under this
86 contract, and those who did not appear thereunder were without any authority whatever to appear for said Indians at any time or place. Nothing was accomplished for the Indians under the Maish-Gordon contract. Notwithstanding its expiration, however, a number of attorneys claim to have rendered efficient services,

and to have accomplished, by the permission and authority of the Congress and the committees thereof, the final compliance with the agreement of 1891 and secured by the act of June 21, 1906, an appropriation covering the money consideration mentioned in said agreement. In the same act making said appropriation appears the jurisdictional statute whereby said claimants appeared and filed their petitions in this court. The language of the act is as follows: "Jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render final judgment in the name of Butler and Vale (Marion Butler and Josiah M. Vale), attorneys and counselors at law, of the city of Washington, District of Columbia, for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of said Indians in the prosecution of the claim of said Indians for payment for said land, and in determining the amount of compensation for such services the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim. Petition hereunder shall be filed in said court by the said attorneys (Butler and Vale), within thirty days from the passage of this act, and the Attorney-
87 General shall appear on behalf of the defendants, and said cause shall be given preference for immediate hearing in said court, and the Secretary of the Treasury is hereby authorized and directed to pay the sum of money so awarded by said court to the said attorneys (Butler and Vale), upon the rendition of final judgment, out of the said sum herein set apart or appropriated for the benefit of said Indians, and payment of said judgment shall be in full compensation to all attorneys who have rendered services to said Indians in the matter of their said claim, the same to be apportioned among said attorneys by said Butler and Vale as agreed among themselves: Provided, That before any money is paid to any attorney having an agreement with Butler and Vale as to the distribution of said fees, each of the same shall execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claims."

On June 26, 1906, Butler and Vale filed in this Court, in pursuance of the foregoing statute, their petition herein, seeking to recover the sum of $225,000. The allegations of the petition follow the jurisdictional act and especially assert the right of prosecution and recovery of judgment to be in said petitioners in strict accordance therewith. Subsequent to the filing of said petition, six intervening petitions were filed, in each of which there appears an express disclaimer of any valid agreement respecting the distribution of any sum recoverable under the statute, and asserting the right of prosecution and recovery herein, alleging the performance of professional services as contemplated by the statute, and expressly praying
88 for the rendition of individual judgments as respects the distribution of any fund recovered under the law. Motions to dismiss said intervening petitions were duly filed by Butler and Vale, and the entire controversy, including said motions, was, by order of

court, consolidated, heard together, and will be disposed of as one cause.

The language of the jurisdictional statute indicates its enactment in pursuance of a preexisting state of affairs between the claimants, and especially as concerns a previous agreement among the attorneys concerned, as to the distribution of any fees recovered thereunder. The words "the same to be apportioned among said attorneys by said Butler and Vale as agreed among themselves" can have no other import. The statute was undoubtedly enacted with these special limitations and conditions upon information then before the Congress that some arrangement existed whereby the total sum recoverable under the law should be distributed by a fixed and determined agreement, leaving no discretion to the distributers, and limiting the court to the ascertainment of the amount only. It is apparent that the Congress was not endeavoring to deprive this court of its power and authority over its own judgments and decrees. The Congress never intended to confer upon Butler and Vale that degree of judicial authority and power which would enable them to distribute a judgment of this court in which they were interested as parties litigant upon their own discretion; to have so enacted would have been a senseless and meaningless proceeding, obnoxious to the law, and devoid of justice. (Pam To Pee v. United States, 187 U. S., 371-382-383).

89 This portion of the statute is directory; it was designed for convenience and simplicity; to avoid a multiplicity of suits; and purposed to conclude the rights of the claimants under presupposed agreement with respect to the same. This construction of the statute is sustained by reference to the context of the whole act. The proviso likewise circumscribes the authority of Butler and Vale as to distribution of the funds, and expressly withholds payment of any sum so directed by them until final receipts by the distributees have been executed and filed with the Secretary of the Interior in accordance with a supposed valid and existing agreement with respect to the same. Courts being exceedingly reluctant to withhold jurisdiction where the same can be reasonably inferred to exist from the language and intent of a jurisdictional statute, will not deny redress to suitors because a portion of the statute may fail, if sufficient remains upon which to predicate the relief intended. (Supervisors v. Stanley, 105 U. S., 305.)

While it is true special statutory jurisdiction and remedies are not to be extended by construction beyond a fair import of the legislative grant, yet it has long been the law that doubts may be solved in favor of jurisdiction unless some established law is violated. We are not unmindful of the authority of the Congress to prescribe rules by which a particular case or class of cases over which this court is given jurisdiction shall be determined. No doubt exists that jurisdiction is strictly limited to the prescribed terms of the statute. This court has never held otherwise. There is nothing, however, in the special jurisdictional statute now under consideration which by ex-

90 press language curtails the judicial functions of the court, and proscribes an exercise of that inherent power lodged in all

judicial tribunals to give effect to the legislative intent, and otherwise construe a statute ambiguous upon its face, and by the very existence of which the machinery of the court is set in motion. (Enlich on Statutory Construction, sec. 430.)

The objection does not extend to the subject-matter of the statute, or in any wise affect the substantive rights of the parties. It can at most simply affect a mode of procedure, a subject secondary in importance to the real object, purpose, and scope of the act. (Liverpool Bank v. Turner, 30 L. J. Ch., 380.)

The statute having simply recited a supposed agreement, the language being "as agreed among themselves," is of itself quite indefinite. Whether it was oral or under seal likewise failed to appear, until the same was produced in this court, by its special order, and only then under protest. The parties thereto, the terms thereof, were never revealed to certain of the interveners until the production of the instrument in this court at the trial of this cause. To require of this court the adjudication and determination of a cause involving a claim of $225,000, and place whatever judgment it might render, to be distributed according to an alleged agreement which it might never have seen, would entail results so absurd in their consequences, so at variance with well-recognized rules of legal procedure and established precedents as to render such an act, standing alone, absolutely void. The Congress never intended such results, and
91 even if so intended subsequent events have proven that the information attending the enactment of the statute did not fully embrace the entire history of the subject-matter of the legislation, and that the Congress so anticipated will appear hereafter.

If it were otherwise this case must fail. The intervening petitions expressly repudiate the existence of an agreement of distribution. The findings show that some at least of the interveners were not parties to the alleged agreement at all. The court's conclusion shows the absence of any such agreement as the statute contemplated to exist.

That particular direction contained in the statute is incapable of enforcement and, unless we can find authority to proceed aside from it, the petition would be dismissed. The Congress had before it at the time of the enactment of the statute a claim against the Colville Indians for services rendered by certain attorneys. It recognized the justice of such a claim. The legal authority under which said attorneys had previously appeared had expired; they were relegated entirely to special legislation for relief. The Congress granted the relief, the special statute was passed, and notwithstanding the reference to an agreement as to distribution of the judgment the general language of the whole statute is sufficiently comprehensive to embrace, as it was clearly intended to do, the claims of "all attorneys who have rendered services to said Indians in the matter of their said claim." No intention appears to limit the adjudication to persons signatory to the agreement mentioned. The adjudication intended was to include and cover the whole transaction. The
92 jurisdiction granted extended to the entire scope of the subject-matter referred, and to all parties interested therein.

While the jurisdictional statute contains many inconsistencies and upon its face is decidedly ambiguous, still it is not so worded as to prevent the elimination of meaningless and nonenforceable clauses and leave sufficient authority upon which the court can adjudicate and determine the real controversy. However, in following the conclusions set forth above, we are confronted with another contention, put forth by the defendants. The findings disclose that the only valid contract between the Indians and any attorney or attorneys had expired. The prosecution of their claim subsequent to May 12, 1904, was entirely without authority; claimants were volunteers, and the question arises, Does the jurisdictional statute repeal *pro tanto* section 2103, R. S.; or, is the question of a legal liability to pay attorney's fees relegated by the act to this court? In any event, can there be a recovery in the absence of a valid contract of employment? In the case of Lone Wolf v. Hitchcock (187 U. S., 553) the plenary power of the Congress over Indian tribes and Indian property was decided. The question of authority to create a liability for the payment of an obligation upon the part of Indian tribes by the Congress is now at rest. While the jurisdictional act does not create a positive liability, it does confer judicial power and authority upon this court to ascertain the question of liability, and enforce the same, if any such is found to exist. The court is vested with discretion as to consideration of contracts of employment in ascertaining the extent of compensation, and the silence of the statute with respect to
93 any statutory agreements clearly indicates a legislative intention to refer the whole matter to this court for adjudication and determination, irrespective of section 2103, R. S. If it were not intended to repeal *pro tanto* section 2103, R. S., the passage of the jurisdictional statute was unnecessary. Section 2103 provides as follows:

"SEC. 2103. No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

" 'First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

" 'Second. It shall be executed before a judge of a court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

" 'Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their
94 tribal authorities, the scope of authority and the reason for exercising that authority shall be given specifically.

" 'Fourth. It shall state the time when and place where made, the

particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

" 'Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

" 'Sixth. The judge before whom such contract or agreement is executed shall certify officially the time when and place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to him at the time; the parties present making the same; the source and extent of authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of either party or parties.'

"All contracts or agreements made in violation of this section shall be null and void, and all money or thing of value paid to any person by any Indian or tribe, or any one else, for or on his or their behalf, on account of such services, in excess of the amount approved
95 by the Commissioner and Secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid."

It will be observed that under the provisions of this statute resort to the courts and further legislation is unnecessary to obtain payment of fees as therein provided. In United States v. Crawford (47 Fed. Rep., 569) the court in construing a statute directly contrary to section 2103, R. S., and wherein the question of compensation for services to an Indian tribe was involved, held, that as to the special matter embraced within the jurisdictional statute, it was a repeal *pro tanto* of section 2103, R. S. It is quite true that repeals by implication are not favored in law. Yet absolute inconsistent provisions in two statutes wherein the latter covers the whole subject-matter of the earlier statute and is repugnant thereto, must be intended to repeal the earlier statute. In view of the facts and circumstances surrounding the enactment of the jurisdictional statute here questioned, we can not hold otherwise than that the Congress intended to reward claimants, if entitled to reward, upon the basis of a *quantum meruit*. (9 Decisions of the Comptroller, 264.) The legislative body, vested with supreme and absolute authority in the premises, recognized the existence of a claim against the defendants, and, sweeping aside all legal impediments to its assertion, afforded
96 them a forum and a jurisdiction to hear, adjudicate, and determine their cause. The Congress have frequently so legislated; very recently, in the Watson Stewart case (43 C. Cls. R., —).

The contracts in the record, both those dealing with employment

of attorneys, and the one respecting the division and distribution of any sum recovered among claimants, have been used as evidence. The contention so earnestly urged by a portion of the claimants respecting the binding force of the contract of distribution can not be sustained; the instrument is valuable as indicating the amount counsel signatory thereto were willing to accept, and likewise their proportionate share thereof; but it can not conclude the court in either respect, much less the defendant Indians who were never parties thereto. The instrument upon its fact indicates its execution in anticipation of immediate appropriation by the Congress of the sum claimed as attorney fees, and does not embrace the claims of certain interveners under the jurisdictional statute. The court is at present considering a claim asserted against the Colville Indians. Any sum allowed is deducted from their trust funds and decreases proportionately their distributive share thereof. In arriving at the amount due and the distribution thereof the defendant Indians are entitled to consideration, and to know by what authority and in what manner their property has been disposed of. Congress could not have intended to limit and constrain, thereby prejudging the value of services to individuals, by requiring us to give certain claim-

ants under the jurisdictional act a fixed pro rata share of the
97 judgment of this court irrespective of the testimony in the record. The Attorney-General is by the express terms of the statute directed to appear for the Indian defendants; and if the defense so commanded is to be circumscribed in its extent and embraces no right to challenge the justice of the claim, both in respect to the total amount claimed and individual distribution of the same, it would be perfunctory in character, and *im*pose the performance of a well-nigh meaningless act. If the court should find some one party to this agreement entitled to no allowance, it would necessarily increase the amount to those allowed. If the testimony indicated the justness of a decreased allowance to one of the parties thereto it would deprive the court of power to execute its judgment. In fact the instrument invades the judicial power of the court. It submits an issue in nowise justiciable, is *ex parte* as respects the defendants, and, however extensive in morals as respects the assertion of claims in contravention thereto, has no standing in the present controversy which this court is obliged to respect.

No positive rule can be invoked as to the amount allowable to attorneys as fees for professional services; the quantum depends in each case upon the particular circumstances surrounding the transaction. Courts are not in any wise loath to decree ample compensation to those engaged in the prosecution and management of important controversies involving personal rights and private property. With respect to Indian rights and Indian property courts would be exceedingly reluctant in their duty if they failed to guard with

jealous scrutiny the property of these dependent people.
98 Claims asserted against their trust funds will not be unduly extended beyond the preponderance of testimony establishing the same; and while valid contracts are always enforceable both in law and equity, the court, in the absence of any such contracts, will

predicate its judgment under the jurisdictional statute upon what the testimony in the record shows to be a fair and reasonable compensation for the services performed, keeping in mind the results accomplished and the quantum of property restored. Of course, contingent contracts of employment are entitled to full consideration where, as in this case, they are properly entered into, and the court will not fail to consider this feature of the case at bar.

It appears from the findings that the defendant Indians employed two attorneys to prosecute their claim; they fully expected, in the event of success, to reward said attorneys as the contract expressed, and had the subject-matter of employment terminated successfully during the existence of the contract, the expense incident thereto would have been fixed and determined. Nothing appears in this record to show that had the same degree of labor and vigilance been continuously manifested during the earlier period of the contract's existence, the results finally accomplished might not have been accomplished without the appearance of numerous additional attorneys and the incurrence of increased expense. It is apparent from the record that the claim now asserted, except as to a few claimants, had its inception in the Maish and Gordon contract, claimants agreeing with said attorneys to the contract to assist them in the prosecution of the claim therein mentioned, for a certain
99 percentage of the fee allowed by its terms. We have now, as a result of the expiration of the Maish and Gordon contract, the claims of fourteen petitioners, each of whom alleges the performance of extensive labor and important contributions to the final result. The compensation asked for has increased to $225,000. That the defendant Indians ever contemplated such expense is incredible. That the prosecution of their claim required such an array of counsel is equally as incredible.

Much of the labor was coextensive and cumulative, especially so after the preparation of the brief by Marion Butler and his oral presentation of the cause to the committees of the Senate. The claimants who first appeared under the co-called McDonald contract added little that had not already been said and done prior to their appearance; their services were wholly cumulative and in most respects unnecessary. The issue involved, while quite momentous, was equally as simple; it was direct and apparent, and when the history of the case had been fully brought forth and the law applicable thereto stated in brief and arguments, it is inconceivable how its repetition by numerous attorneys could materially aid in the final determination of the cause. That they performed some service will not be denied; the service contemplated, however, is not mere manual labor, but effective and resultant service, that which did or tended toward the accomplishment of the appropriation. Their coming into the case, and the circumstances under which they came, not having been employed by the Indian defendants, and claiming a right to appear by virtue of contract never approved by the
100 Secretary of the Interior, all suggest a voluntary projection of themselves upon the defendants at a time when their services were not indispensable and could not have materially as-

sisted in the final disposition of the claim. The preparation of the case had been concluded, the briefs filed, the law examined, arguments made, and nearly, if not quite, all steps necessary to secure Congressional action been taken prior to their appearance. The court under these circumstances is not disposed to appropriate any portion of the defendants' property in payment of fees to these claimants.

The claims of Richard D. Gwydir, James W. Edwards, A. M. Anderson, Samuel L. Magee and Wendell Hall have likewise been dismissed; they have absolutely no claim against the defendants. What, if any, service was rendered by the Indian Protective Association does not appear, and no allowance is made therefor.

The court, after full consideration of the subject-matter, taking into account the attitude of and the valuable assistance rendered by the Department of the Interior, makes the following allowances:

To Benjamin Miller, administrator of the estate of Levi Maish, deceased	$6,000
To Hugh H. Gordon	14,000
To Marion Butler	20,000
To Josiah Vale	10,000
To Daniel B. Henderson	5,000
To Heber J. May	3,000
To Frederick C. Robertson	2,000

Motion for new trial filed herein will be overruled and
101 judgment awarded the claimants as set forth above. All other petitions and intervening petitions are dismissed.

Howry, J., was absent and took no part in this case.

Intervening Petition of Heber J. May and Louis A. Pradt.

Filed December 5, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28005.

RICHARD D. GWYDER et al.

vs.

CHARLES H. TREAT, Treas. et al.

Equity. No. 28000.

INDIAN PROTECTIVE ASSOCIATION

vs.

CHARLES H. TREAT, Treas. et al.

The intervening petition of Heber J. May and Louis A. Pradt respectfully shows to the Court that they are and were at all the times hereinafter mentioned attorneys and counselors at law engaged in the practice of their profession in the various Courts of the District of Columbia including the United States Court of Claims and the Su-

preme Court of the United States and before the various executive departments in said District; that on the 25th day of May, 1908, the United States Court of Claims awarded to Benjamin Miller, administrator of the estate of Levi Maish, one of the defendants in the above entitled actions, the sum of $6,000 in full of the claim of said Levi Maish for compensation for services rendered to the Colville
102 Indians which claim was at the time pending before said Court of Claims in case No. 29526 of said Court for determination and adjudication under a special Act of Congress cenferring jurisdiction upon said Court for said purpose; that said claim was presented and prosecuted to such determination and award by your petitioners as attorneys for said Benjamin Miller, administrator, pursuant to an agreement of employment and for compensation for such employment of which the following is a copy:

Fee Agreement.

Whereas, Benjamin Miller, Administrator of the estate of Levi Maish, deceased, of Washington, District of Columbia, has a claim against the United States for services of said Levi Maish, deceased, as counsel and attorney rendered in behalf of the Colville and other bands of Indians under a contract with said Indians, dated May 12, 1894, the said claim and services being more particularly described in the petitions and papers on file in case No. 29526, now pending in the United States Court of Claims, and has appointed Louis A. Pradt and Heber J. May, of Washington, D. C., his attorneys to prosecute the same before any of the Courts of the United States, and upon appeal to the Supreme Court of the United States, or before any of the Departments of the Government, or before the Congress of the United States, or before any officer, commission, convention, or tribunal authorized to take cognizance of said claim, as may be deemed best for the interests of the said claimant and by and with consent
103 of said administrator; therefore, this agreement witnesseth, that said claimant hereby agrees to pay to said Louis A. Pradt and Heber J. May, as his attorneys, a fee equal to thirty-three and one-third (33⅓%) per cent. of the amount which may be allowed on said claim; and said claimant hereby agrees to pay from time to time all necessary costs arising in the prosecution of said claim, such as for taking testimony, and to execute such powers of attorney as may be necessary or convenient for the successful prosecution and collection of said claim.

In testimony whereof, I have hereunto set my hand and seal this 7th day of December, A. D., 1907.

(Signed) BENJAMIN MILLER, [SEAL.]
Administrator of the Estate of Levi Maish, Deceased.
(Signed) HEBER J. MAY.
(Signed) LOUIS A. PRADT.

Attest as to Miller's signature:
MARTIN H. BRAY.
As to May's and Pradt's signatures:
GEO. C. HAZELTON.

The appointment of your petitioners as said attorneys recited in the foregoing agreement was through a prior written power of attorney to the petitioner Heber J. May from said Benjamin Miller, administrator, and an employment subsequent to said power of attorney and shortly prior to said agreement of the petitioner Louis A. Pradt as associate counsel with said attorney Heber J. May. Your petitioners pursuant to said employment fully performed all the services required of them by said agreement and employment with the
104 result of the award of the sum of $6,000 on said claim to said Benjamin Miller, administrator, as above stated. Upon such determination of said claim and said award, by the terms and by virtue of the Jurisdictional Act aforesaid, the said award became payable out of funds of the said Colville Indians then in the Treasury of the United States and on the first day of July, 1908, said fund became available for purposes of the payment of such award and was about to be paid to said Benjamin Miller, administrator, when the above entitled actions were instituted as a result of which the defendant Charles Treat, Treasurer of the United States, was enjoined from making such payment and by various orders of this Court Charles Poe, James B. Archer, Jr., and Nathaniel Faucett were appointed as receivers to receive payment of the amount of said award of $6,000 and to hold the same subject to the order of this Court. Pursuant to said appointment the sum of $6,000 so awarded was paid to the said receivers and it is now held by them, as such receivers, subject to the order of this Court.

Your petitioners further represent to the Court that by virtue of the above recited employment and agreement for compensation and of the performance by them of their part of said agreement as above set forth they became entitled by equitable assignment, upon the making of said award, to be paid one-third of the same or $2,000 as their contingent fee for such services and that upon the amount of said award becoming available for payment, as above set forth, by the Treasurer of the United States, your petitioners acquired and
105 now have an equitable lien upon said amount of $6,000, to have and receive payment of said sum of $2,000 therefrom.

On the 4th day of December, 1908, your petitioners gave notice to said receivers and to the solicitors for the above named complainants of the facts above recited and of their equitable lien as such attorneys, upon said sum of $6,000 in the hands of said receivers for the said amount of $2,000. No part of said amount of $2,000 has been paid to your petitioners but the same is now wholly due to your petitioners.

Wherefore your petitioners pray that by order of the Court they be decreed to have an equitable lien upon said fund, being the amount of said award of $6,000 to the defendant, Benjamin Miller, administrator of the estate of Levi Maish, for the sum of $2,000, as such attorneys' fees, and for a further order directing the said receivers to pay the said amount of $2,000 to your petitioners, said payment to be in full discharge of their said lien.

HEBER J. MAY,
LOUIS A. PRADT,
In Proper Person.

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on this 5th day of December, 1908, before me the subscriber a Notary Public duly commissioned and authorized, duly appeared Louis A. Pradt and being by me first duly sworn, on oath says that he is one of the petitioners whose name is signed
106 to the foregoing petition and that he makes this affidavit in his own behalf and on behalf of his co-petitioner, Heber J. May, being by him authorized so to do; that he has read the foregoing petition and knows the contents thereof and the matters and things there set forth are true of his own knowledge.

——— ———.

Subscribed and sworn to before me this 5th day of December, 1908. [SEAL.] MINNIE LESTER,
Notary Public.

Commission expires Dec. 12, 1912.

(Endorsed:) Leave to file is hereby granted. Job Barnard, Justice.

Intervening Petition &c., of Butler and Vale.

Filed December 22, 1908.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Eq. No. 28005.

RICHARD D. GWYDIR, J. W. EDWARDS, and WENDELL HALL, Complainants,

vs.

CHARLES H. TREAT, Treasurer of the United States; HUGH H. Gordon, and Benjamin Miller, Administrator of Estate of Levi Maish, Deceased, Defendants.

Consolidated therewith are—

107 Eq. No. 28000.

INDIAN PROTECTIVE ASSOCIATION, Complainant,

vs.

CHARLES H. TREAT, HUGH H. GORDON, and BENJAMIN MILLER, Administrator, Defendants.

Eq. No. 28001.

INDIAN PROTECTIVE ASSOCIATION, Complainant,

vs.

CHARLES H. TREAT, Treasurer of the United States, and HEBER J. MAY, Defendants.

Eq. No. 28006.

FREDERICK C. ROBERTSON, Complainant,

vs.

HUGH H. GORDON, MARION BUTLER, and JOSIAH M. VALE, Defendants.

Come now Butler & Vale by Marion Butler and Josiah M. Vale, co-partners trading and doing business under the firm name and

style of Butler & Vale and by leave of court first had and obtained and after consent of all parties in open court file this their intervening petitions in Equity Causes Nos. 28005, 28000 and 28001 and their answer and cross bill in Equity Cause No. 28006, and, praying that this Honorable Court will treat this, the statement of their grievances and appeal for relief, as applicable to each and every of the causes consolidated as set forth hereinabove, respectfully represent to the Court as follows:

1. That by its certain original bill of complaint in Equity
108 No. 28000 the Indian Protective Association, a corporation doing business in the District of Columbia, and suing in its own right, prayed this Honorable Court for an injunction to restrain Charles H. Treat, Treasurer of the United States, from paying and Hugh H. Gordon and Benjamin Miller, Administrator of the Estate of Levi Maish, deceased, from demanding of or receiving from said Treat sums of money of $14,000 and $6,000 respectively awarded said Gordon and said Miller respectively, for services to the Colville Indians by a judgment or decree of the Court of Claims of the United States, or what was styled such in said bill of complaint, the said bill of complaint of said Indian Protective Association alleging that it, said Indian Protective Association, had a lien on or was entitled to and should be decreed to have an equitable interest in said sums so awarded as aforesaid to said Hugh H. Gordon and Benjamin Miller, Administrator of the Estate of Levi Maish, deceased, by virtue of certain contracts made by said Hugh H. Gordon as surviving partner of the firm or co-partnership of Maish & Gordon and mesne conveyances of the interests acquired by said contracts by parties transferring and assigning the same to said Indian Protective Association.

2. That by its certain original bill of complaint in Equity No. 28001 the Indian Protective Association, a corporation doing business in the District of Columbia and suing in its own right, prayed this Honorable Court for an injunction to restrain Charles H. Treat, Treasurer of the United States, from paying and Heber J. May from demanding of or receiving from said Treat the sum of three thou-
sand dollars awarded said May for services to the Colville
109 Indians by a judgment or decree of the Court of Claims of the United States or what was styled such in said bill of complaint, the said bill of complaint of said Indian Protective Association alleging that it, said Indian Protective Association, had a lien on or was entitled to and should be decreed to have an equitable interest in and to the entire award aforesaid to said Heber J. May by virtue of certain transfers and assignments made for valuable consideration by said May and thence by mesne conveyances and assignments to said Indian Protective Association.

3. That by their certain original bill of complaint in Equity No. 28005 Richard D. Gwydir, J. W. Edwards and Wendell Hall, residents of the State of Washington suing in their own right, prayed this Honorable Court for an injunction to restrain Charles H. Treat, Treasurer of the United States, from paying and Hugh H. Gordon and Benjamin Miller, Administrator of the Estate of Levi Maish, deceased, from demanding of or receiving from said Treat sums of

money of $14,000 and $6,000 respectively awarded said Gordon and said Miller respectively, for services to the Colville Indians, by a judgment or decree of the Court of Claims of the United States, or what was styled such in said bill of complaint, the said bill of complaint of said Gwydir, Edwards and Hall alleging that they had a lien on and were entitled to and should be decreed to have an equitable interest in said sums so awarded as aforesaid to said Hugh H. Gordon and Benjamin Miller, Administrator of the Estate of Levi Maish, deceased, by virtue of services rendered to said Maish & Gordon in procuring contracts of attorneyship with the Col-
110 ville Indians referred to in the name of Maish & Gordon and assignment made by said Maish & Gordon to said Gwydir, Edwards and Hall of a share out of any moneys that said Maish & Gordon or either of them might be awarded for representing said Colville Indians.

4. That by his certain original bill of complaint in Equity No. 28006 Frederick C. Robertson, a resident of the State of Washington, suing in his own right, filed his bill in equity against Hugh H. Gordon in his own right and Marion Butler and Josiah M. Vale in their own right individually and as partners under the firm name and style of Butler & Vale, alleging in and by his said bill of complaint that said Butler & Vale had an indeterminate interest in and control and custody of an award made by the Court of Claims of the United States, or what was alleged in the said bill of complaint of said Robertson to be such, on account of certain legal services rendered by various attorneys at law to the Colville Indians in the matter of a claim for $1,500,000 against the Government of the United States, but that part of said award had been made to said Hugh H. Gordon individually and that in said part so awarded said Gordon said Butler & Vale had no interest except to the use of complainant Robertson and said Gordon, and that by the terms of an agreement between said Robertson and said Gordon said Robertson was entitled to a one-half interest plus $150 out of the total sum awarded by said Court of Claims to both said Gordon and said Robertson, the sum so awarded said Gordon being fourteen thousand dollars, and the sum awarded said Robertson being two thousand dollars. That in and by his bill of complaint said Robert-
111 son prayed this Honorable Court for an injunction against the three defendants named in his said bill of complaint and each of them, that he, said Robertson, be decreed to have an equitable lien on the amount awarded to Hugh H. Gordon as aforesaid and that Butler & Vale be decreed to have no title to or interest in the sums so awarded said Robertson and said Gordon as aforesaid.

5. That the said several causes hereinbefore referred to were by this Honorable Court consolidated as aforesaid, receivers appointed for the several funds the subject matter of complaint in the several suits hereinbefore referred to, the same having been prayed for specifically by the complainants in each and every of the several suits and leave granted by consent of all the parties in open court to Butler & Vale to intervene, answer or file a cross bill or bills in each cause consolidated as might be appropriated in each separate cause

or as they might be advised. That the bill as to Charles H. Treat was dismissed and the funds turned over to the Receivers, Charles Poe, James B. Archer and Nathan S. Fawcett.

6. That your complainants in this cross bill, answer and intervening petition, namely, Butler & Vale, copartners practicing law under the firm name and style of Butler & Vale, of which said copartnership Marion Butler and Josiah M. Vale are the sole individual members, deny that either any or all of the parties, except themselves, Butler & Vale, to the several suits in equity hereinbefore referred to, are entitled to have paid to them or any of them the sums of money or any of the sums of money claimed or alleged to be due to them, the several other
112 parties to this consolidated cause, whether by virtue of the award or purported award, judgment or decree of the Court of Claims or by assignments, transfers or conveyances of any part of said award, judgment or decree of the Court of Claims or by assignments, transfers or conveyances of any part of said award, judgment or decree or that either, any or all of the several other parties aforesaid to this consolidated bill in equity have any interest or interests in the award or awards save subject to the rights of your cross complainants and intervenors Butler & Vale and save as your cross complainants and intervenors may justly find to be due them or either or any of them the complainants or defendants to the several original bills of complaint hereinbefore referred to.

7. That your cross complainants and intervenors Butler & Vale are entitled to have the whole of the said several sums mentioned in the several original bills of complaint hereinbefore referred to paid over to them said Butler & Vale to be by them disbursed in accordance with the law of Congress providing for the payment of the claim of the Colville Indians and ascertainment of and distribution to the attorneys securing the payment of said claim to the Indians, after first deducting the cost of prosecution in the Court of Claims, including reasonable attorneys' fees, of the claims of attorneys to compensation and the costs of these proceedings and to have the award, judgment or decree of the Court of Claims purporting to find the several shares of the several claimants to the attorneys' fund or fee and to distribute the same set aside as null and void and
113 in excess of the jurisdiction of said Court of Claims and a judgment and decree entered directing the payment and disbursement to Butler & Vale by the officers of the Treasury of the United States of the entire sum yet undisbursed of the total award made by the Court of Claims to attorneys, as fees for services in representing the Colville Indians and obtaining payment of their claim against the United States by the Government of the United States.

8. That the Colville Indians for many years past had a claim against the United States for $1,500,000 for the cession of part of the Colville Indian Reservation and employed directly or mediately a number of attorneys at law to prosecute their claim in their behalf before the Congress of the United States, the executive departments or courts thereof on a contingent basis, those employed among others being the law co-partnership or firms of Maish & Gordon and

Butler & Vale, and Heber J. May, Frederick C. Robertson, Daniel B. Henderson and others. That your cross complainants and intervenors Butler & Vale took the most active part in prosecution of the claims of said Colville Indians, which prosecution of the claim aforesaid was necessarily chiefly before the Committees of Congress charged with special attention to Indian affairs. That the final provision by Congress for payment of the aforesaid claim of the Colville Indians was due almost solely to the active unremitting efforts of Butler & Vale after Maish & Gordon and most of their associates had failed and this fact was well known to Congress and the committees thereof.

That in consequence thereof Congress as the special and ple-
114 nary guardian of the Indians and their affairs in providing for payment of the claim of the Colville Indians passed a special jurisdictional act for payment of the fee of the attorneys who had rendered services to said Colville Indians after the said attorneys each and all at the instance of the Committees on Indian Affairs of Congress had agreed among themselves on the basis of division of the total fees to be awarded, conferring jurisdiction on the Court of Claims to ascertain, determine and adjudicate the total fees due by the Indians for services of all attorneys, but directing that the legal proceedings to ascertain the fee due should be in the name of Butler & Vale, that the award or judgment rendered should be rendered in the name of Butler & Vale, that the said award or judgment should be paid to Butler & Vale by the Treasury of the United States out of a certain money payment due to the Indians and that the said award or judgment should be distributed by Butler & Vale among the several claimants on the basis of an agreement among them. A true copy of said special jurisdiction act is attached hereto marked "Butler & Vale Exhibit A."

9. That your cross complainants and intervenors Butler & Vale prosecuted in the Court of Claims the claim of the attorneys for the fee due them by the Court of Claims in the firm name of Butler & Vale and at their own firm expense for costs of suit, which said costs were heavy and burdensome and were solely borne by said Butler & Vale with the knowledge of the several other attorneys claiming interests in the fee to be awarded. That Hugh H. Gordon, Benjamin Miller, Administrator of the estate of Levi Maish, deceased, and

Heber J. May, repudiated their agreements with reference
115 to the fees and intervened at the hearing by the Court of Claims of the question referred to said Court of Claims of the fee that it should find due and payable by the Colville Indians. That the Court of Claims found the total fee due by the Colville Indians to their attorneys on account of prosecution of the aforesaid claim of $1,500,000 against the United States to be $60,000. That so much of said decree as fixed and adjudicated the total fee due by the Indians is valid and binding. That in excess of its jurisdiction and without authority of and contrary to law, equity and right the Court of Claims thereupon undertook to and did violate the terms of the jurisdictional act referring the matter of fee due by the Indians to it, and over the protest of your cross complainants and intervenors Butler & Vale, and attempted to pass a judgment or decree

finding the several sums to which various attorneys were entitled out of the total fee award of $60,000 and directed that judgments should be entered up in the several names of each of these attorneys. That the division of the fee as made by the Court of Claims was as follows:

To Benjamin Miller, Administrator of the Estate of Levi Maish, deceased	$6,000.00
To Hugh H. Gordon	14,000.00
To Marion Butler	20,000.00
To Josiah Vale	10,000.00
To Daniel B. Henderson	5,000.00
To Heber J. May	3,000.00
To Frederick C. Robertson	2,000.00

That the foregoing separate findings, awards or judgments
116 were not and are not in accordance with the agreements between the parties referred to in the jurisdictional Act of Congress. That the amounts awarded Benjamin Miller, Administrator, Hugh H. Gordon and Heber J. May are far in excess of the amounts to which they are entitled under the agreements referred to in the Act of Congress, while the amounts awarded to Marion Butler and Josiah Vale are far less individually or collectively than the firm of Butler & Vale was and is entitled under the terms of the agreements referred to in the Act of Congress or than either of the members of said firm of Butler & Vale was and is entitled to under the agreement between them, said Marion Butler and said Josiah Vale, with reference to said firm fee. That your cross complainants and intervenors were put to heavy expense in prosecuting before the Court of Claims the claim to the fee to be paid by the Indians, none of which expense was borne or offered to be borne by the other parties to the consolidated suits, and the Court of Claims in its alleged judgment or decree awarded Butler & Vale no reimbursement of the costs to which they necessarily had been subject, including attorneys' fees.

10. That the Court of Claims was absolutely without jurisdiction to render judgment or decree save in the name of Butler & Vale for the total fee awarded to be paid out of the funds of the Indians and its judgment or decree so far as it attempted to adjudicate the several sums due each attorney is null and void. That the Treasurer of the United States is without authority of law to pay the moneys or any part thereof found to be due by the Indians except to Butler
117 & Vale, and so likewise are the receivers succeeding him. That your cross complainants and intervenors by reason of the fact that the sums adjudged and decreed in their names was far less than the amount to which the firm of Butler & Vale were entitled and inasmuch as acceptance of the same could injure no one received and accepted from the Treasurer of the United States the sums adjudged and awarded them individually by the Court of Claims. That your cross complainants and intervenors Butler & Vale are by law entitled to have the entire balance of the fee found due by the Colville Indians on account of prosecution of their afore-

mentioned claim paid over to them Butler & Vale, to have the several purported findings or awards adjudged by the Court of Claims as due to each person named in said award, judgment or decree declared null and void, to have a decree passed by this Honorable Court directing that the balance remaining after payment of costs of suit shall be disbursed by Butler & Vale in accordance with the terms of the agreements referred to in the Act of Congress.

Wherefore, the premises considered your cross complainants and intervenors Butler & Vale pray as follows:

First. That process may issue out of this Honorable Court directed against the said Hugh H. Gordon, Benjamin Miller, Administrator of the Estate of Levi Maish, deceased, the Indian Protective Association, Heber J. May, Frederick C. Robertson, Richard D. Gwydir, J. W. Edwards, Wendell Hall and James B. Archer, Charles Poe and Nathan S. Fawcett, the receivers appointed by this Court, commanding them and each of them to appear in this Honorable
118 Court to answer the premises and to abide by and perform such orders or decrees as may be passed herein.

Second. That a final judgment or decree be passed by this Honorable Court declaring your intervenors and cross complainants, the firm of Butler & Vale, entitled to the entire balance remaining under control of this Court of the fee found by the Court of Claims to be due by the Colville Indians to attorneys for the successful prosecution of the claim of the Colville Indians against the United States for the $1,500,000 herein referred to and directing that the same be turned over to the firm of Butler & Vale.

Third. That the purported findings, awards, judgments, or decree of the Court of Claims declaring or undertaking to declare the distributive share of each attorney in the fee of $60,000 herein referred to as due by the Colville Indians to the attorneys for successful prosecution of their claim for $1,500,000 be declared null and void and of no effect and that the same be decreed set aside and for naught held.

Fourth. For such other and further relief as to the Court may seem meet and proper and the nature of the cause may demand.

The defendants to this cross bill are Hugh H. Gordon and Frederick C. Robertson personally and Charles Poe, James B. Archer and Nathan S. Fawcett, as Receivers, and the parties to the intervening petitions are Richard D. Gwydir, J. W. Edwards, Wendell Hall, the Indian Protective Association, Hugh H. Gordon, Benjamin Miller, Administrator of the Estate of Levi Maish, deceased, and
119 Heber J. May and Charles Poe, James B. Archer and Nathan S. Fawcett, Receivers.

BUTLER & VALE,
By J. M. VALE.

KAPPLER & MERILLAT,
Solicitors for Intervenors and Cross Complainants.

DISTRICT OF COLUMBIA, *ss:*

Josiah M. Vale, being first duly sworn, upon oath deposes and says: That he is a member of the law co-partnership or firm of Butler & Vale; that he has read the foregoing bill of complaint by

him subscribed and knows the contents thereof; that the matters and things therein stated upon his own knowledge are true, and those things stated upon information and belief he believes to be true.

J. M. VALE.

Subscribed and sworn to before me this 22nd day of December, A. D. 1908.

[SEAL.] MARTHA M. BECK,
Notary Public, D. C.

My commission will expire October 23, 1912.

(Endorsed:) Let this paper be filed. Job Barnard, Justice.

120 *Answer of Benjamin Miller to Intervening Petition, &c.*

Filed January 21, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28005.

RICHARD D. GWYDIR et al.
vs.
CHARLES H. TREAT et al.

The defendant, Benjamin Miller, administrator of the estate of Levi Maish, deceased, in equity No. 28,000 consolidated with the above entitled action makes separate answer to the intervening petition of Butler and Vale herein as follows:

1, 2, 3, 4 and 5. He admits the allegations of paragraphs one, two, three, four and five of said intervening petition.

6 and 7. He denies all the allegations in paragraphs six and seven of said intervening petition.

8. He denies the following allegations in paragraph eight of said intervening petition: He denies the allegation in said paragraph of the existence of a law co-partnership or firm of Maish and Gordon. He denies the allegation in said paragraph that said Butler and Vale took the most active part in the prosecution of the claim of said Colville Indians. He denies the following allegation in said paragraph, "that the final provision by Congress for payment of the aforesaid claim of the Colville Indians was due almost solely to the
121 active and unremitting efforts of Butler and Vale after Maish and Gordon and most of their associates had failed and this fact was well known to Congress and the Committees thereof." He denies the allegation in said paragraph that the special Jurisdictional Act set forth in said petition as exhibit "A" thereof was passed by Congress "for payment of the fees of attorneys who had rendered services to said Colville Indians after the said attorneys each and all, at the instance of the Committee on Indian Affairs of Congress, had

agreed among themselves on the basis of the division of the total fees to be awarded." And further answering said paragraph, he alleges the facts to be that the prosecution of said claim of the Colville Indians was carried on primarily by this defendant's decedent, Levi Maish and the defendant Hugh H. Gordon under a contract of said Maish and Gordon with said Indians and that petitioners Butler and Vale were employed by said Gordon to assist in the prosecution of said claim and had no other valid employment in said matter and their services in said matter were valid as a claim for attorneys' fees against said Indians only through such employment; that the action of Congress in making appropriation for the payment of said claim to the Colville Indians was due to the efforts of said Maish and Gordon acting under said contract of employment with said Indians and their various associates employed by them and by said Gordon to assist in the prosecution of said claim under said contract including the petitioners Butler and Vale; that such prosecution of the claim was continued until said claim was finally allowed by Congress and that in such prosecution such attorneys were very
122 substantially aided by the cooperation of the Interior Department and especially of the Indian Office of said Department for several years prior to the time of the allowance of said claim by Congress.

9. He denies the following allegations in the ninth paragraph of said intervening petition: He denies the allegation that the intervenors Butler and Vale prosecuted the claim of attorneys for fees due to them in the Court of Claims so far as said allegation relates to the claim of this defendant for the fees of his decedent, Levi Maish. He denies the allegation that this defendant repudiated his agreement with reference to the fees and denies that this defendant had at the time or ever had any agreement whatever with said Butler and Vale or either of them with reference to the distribution or apportionment of the fees that might be awarded by the Court of Claims in said action. He denies the allegation that the Court of Claims found the total fee due by the Colville Indians to their attorneys on account of the prosecution of the aforesaid claim of $1,500,000 against the United States to be $60,000. He denies the following allegation in said paragraph "that in excess of its jurisdiction and without authority of and contrary to law, equity and right the Court of Claims thereupon undertook to and did violate the terms of the jurisdictional act referring the matter of fee due by the Indians to it, and over the protest of your cross complainants and intervenors Butler and Vale, and attempted to pass a judgment or decree finding the several sums to which various attorneys were entitled out of the total fee award of $60,000 and directed
123 that judgments should be entered up in the several names of each of these attorneys." He denies the allegation in said paragraph that the award of the Court of Claims of $6,000 to this defendant in said action was not and is not in accordance with the agreements between parties referred to in the Jurisdictional Act of Congress and denies that there was any such agreement between said Butler and Vale or either of them and this defendant as is referred to in said Jurisdictional Act of Congress. He denies the allegation

that the amount of award to this defendant was far in excess of the amount to which he was entitled under the agreement referred to in the Act of Congress and denies that any such agreement existed between said Butler and Vale or either of them and this defendant. And further answering said paragraph he alleges the facts to be that in said action in the Court of Claims the Court made no total award of fees and entered no total judgment therefor but made separate and distinct awards to each attorney which the Court found to have been validly employed by said Indians for the value of his specific services upon the principle of *quantum meruit* without reference to the services of any other such attorneys and that in the prosecution of said claim by said Butler and Vale said Butler and Vale utterly denied the right of this defendant to appear at all in the case or to prosecute the claim of his said decedent, Levi Maish, or to recover any amount as attorneys' fees for the services of the said decedent in the said action and utterly refused to co-operate in any way with this defendant in the prosecution of the claim for the services of said Maish; that this defendant was obliged to employ at-

124 torneys to prosecute said claim and by reason of the uncertain character of the claim he employed as his attorneys Heber J. May and Louis A. Pradt on a contingent fee of one-third of the amount that might be recovered upon said claim; that his said attorneys thereupon filed an intervening petition in his behalf in said case which intervening petition said Butler and Vale endeavored to have dismissed by the Court; that this defendant prosecuted said claim at his own cost and at large expense against the determined opposition of said Butler and Vale throughout the trial of said case; that solely by reason of said presentation by this defendant of said claim for the services of his decedent Maish the award of $6,000 was made by the Court of Claims as compensation for such services; that if said claim had not been thus presented or if the petitioners Butler and Vale had succeeded in the attempt to prevent its prosecution no award of any amount would have been made by the Court of Claims for said services of Levi Maish to anyone and the total amount of all the awards for attorneys' fees in said case would have been $6,000 less than it was; that the $6,000 award to this defendant which the intervening petitioners Butler and Vale seek to have by this Court paid over to them would never have existed if the opposition of said petitioners to the prosecution of said claim by this defendant had been upheld by the Court but is solely the fruit of such prosecution of said claim by this defendant through his said attorneys; that this defendant's said attorneys have a lien upon said award of $6,000 for their said contingent fee of one-third thereof and have asserted said lien by intervening petition in this action.

125 10. He denies all the allegations of paragraph ten of said intervening petition. And further answering said paragraph he alleges that by the acceptance of payment from the Treasurer of the United States of the awards to the petitioners made by the Court of Claims set forth in their petition and as stated in said paragraph said petitioners acquiesced in the jurisdiction of said Court to make individual and separate awards including the award of said Court of

$6,000 to this defendant and by such action said intervening petitioners are estopped to here deny the jurisdiction of said Court of Claims to make its said award of $6,000 to this defendant or to deny or attack the validity of said award.

11. And for a further answer to said intervening petition the defendant alleges that by the Jurisdictional Act set forth in said petition and attached thereto as exhibit "A" the Court of Claims was given sole and exclusive jurisdiction to try, determine and adjudicate the claim for compensation to be paid to attorneys who had performed services as counsel on behalf of said Colville Indians in the prosecution of their claim set forth in said intervening petition; that such jurisdiction included the claim of said intervening petitioners and the claim of this defendant for such compensation for services as attorneys in the matter of said claim; that these intervening petitioners Butler and Vale voluntarily submitted themselves to the jurisdiction of said Court by the presentation of their claim for compensation for such services and that this defendant likewise submitted to said jurisdiction by the presentation of his claim for compensation for such services; that in the prosecution and trial of

126 said action these intervening petitioners Butler and Vale presented to said Court of Claims all the issues of fact and of law that have been raised by them in this intervening petition; that said Court after full consideration of the case determined and adjudicated all the questions of fact and of law that had been raised in this petition by said intervening petitioners and as a part of said adjudication made the award to said intervening petitioners set forth in their petition herein and said award of $6,000 to this defendant set forth in said petition; that thereafter these intervening petitioners Butler and Vale gave notice of an appeal from said judgment to the Supreme Court of the United States but subsequently withdrew said appeal and caused the said appeal to be dismissed by the Court of Claims; that the time for appeal from said judgment has long sic*ne* expired and the said judgment is now final and *res adjudicata* as to all the questions of law and fact raised by the intervening petitioners in their petition herein including the validity of the award of $6,000 to this defendant which the said intervening petitioners have attacked in this proceeding. And for further answer to said intervening petition this defendant alleges that by the Jurisdictional Act set forth in said intervening petition the Court of Claims was given sole and exclusive jurisdiction of all the issues raised on this intervening petition and of all questions relating to said claim and that this Court has no jurisdiction to consider or determine any of the questions relating to said claim set forth in said Jurisdictional Act nor any of the issues raised by the said intervening petition of said Butler and Vale.

127 Wherefore, this defendant prays that the said intervening petition of Butler and Vale may be dismissed and that he may be discharged herefrom with his reasonable costs.

And, as in duty and etc.

HEBER J. MAY &
LOUIS A. PRADT,
Solicitors for Benjamin Miller, Administrator of Levi Maish.

DISTRICT OF COLUMBIA, *ss:*

I, N. H. Robbins, a Notary Public in and for the District aforesaid do hereby certify that Benjamin Miller, administrator of the estate of Levi Maish, deceased, personally appeared before me this 21st day of January, A. D., 1909 and being sworn made oath in due form that he has read the foregoing Answer to the Intervening petition of Butler and Vale and knows the contents thereof; that the matters and facts stated therein as of his own knowledge are true and those stated upon information and belief, he believes to be true.

BENJAMIN MILLER.

Given under my hand and seal this 21st day of January, A. D., 1909.

[SEAL.]

N. H. ROBBINS,
Notary Public.

128 *Demurrer to Petition of Butler and Vale.*

Filed February 23, 1909.

In the Supreme Court of the District of Columbia.

In Equity. 28005. Consolidated.

RICHARD D. GWYDIR et al., Complainants,
vs.
HUGH H. GORDON et al., Defendants.

These defendants, by protestation, not confessing or admitting any of the matters and things alleged in the petition of Butler and Vale, herein, to be true in manner and form as the same are alleged, demur to the said petition and the relief prayed therein and say there is no equity in the same and that the said petition presents no matter for the cognizance of this Court or any cause of action whereon the Court can ground the relief prayed in and by the same or any other equitable relief whatsoever.

PRADT, LIPSCOMB, ARCHER,
Solicitors for Defendants.

DISTRICT OF COLUMBIA, *To wit:*

I, Hugh H. Gordon, do solemnly swear that the foregoing demurrer is not interposed for any purpose of delay.

HUGH H. GORDON.

129 Subscribed and sworn to before me this 23rd day of February, A. D. 1909.

J. R. YOUNG, *Cl'k,*
By F. E. CUNNINGHAM,
Ass't Cl'k.

We hereby certify that in our opinion the foregoing demurrer is well founded in law.

JAMES B. ARCHER, JR.,
Of Solicitors for Defendants.

Amendment to Intervening Petition and Cross Bill.

Filed March 3, 1909.

In the Supreme Court of the District of Columbia.

Eq. No. 28005. Consolidated.

RICHARD D. GWYDIR, et al., Complainants,
vs.
HUGH H. GORDON et al., Defendants.

Come now the intervenor- and cross-complainant- Butler & Vale and amend their intervening petition and cross bill by inserting in Paragraph 8 of said intervening petition and cross bill after the words "this fact was well known to Congress and the Committees thereof," the following: "that at and long before the Act of Congress herein referred to was passed, providing for the payment of the Colville Claim and of attorneys' fees, as provided for therein, all contracts of attorneys with the Colville Indians for the prose-
130 cution of the claim aforesaid, had expired, ceased and determined, and none of the parties to this bill or any other parties whatsoever had any contracts or claims against said Indians for services as attorneys or otherwise in the matter of the prosecution of said claim that was or were valid and lawful, or that was or were enforceable at law or in equity and all parties to the pending litigation were aware thereof and so understood and knew at, before and after the time of the passage of the Act of Congress providing for the payment of said claim."

BUTLER & VALE.

KAPPLER & MERILLAT, *Attorneys.*

(Endorsed:) Leave to file granted. Wright, Justice.

Demurrer to Petition and Cross-bill of Butler and Vale.

Filed March 6, 1909.

In the Supreme Court of the District of Columbia.

In Equity. 28005. Consolidated.

RICHARD D. GWYDIR et al., Complainants,
vs.
HUGH H. GORDON et al., Defendants.

This complainant, Indian Protective Association, a corporation, by protestation, not confessing or admitting any of the mat-
131 ters and things alleged in the Petition and Cross Bill of Butler and Vale, herein, to be true in manner and form as the same

are alleged, demur- to the said Petition and the Cross Bill and the relief prayed therein and say- there is no equity in the same and that the said Petition and Cross Bill present no matter for the cognizance of this Court or any cause of action whereon the court can ground the relief prayed in and by the same or any other equitable relief whatsoever.

CHARLES POE,
BERRY & MINOR,
Solicitors for Complainant Indian Protective Association.

We hereby certify that in our opinion the foregoing demurrer is well founded in law.

CHARLES POE &
BERRY & MINOR,
Solicitors for Complainant Indian Protective Association.

DISTRICT OF COLUMBIA, *ss:*

I, Daniel B. Henderson, being first duly sworn according to law, upon oath depose and say that I am the Secretary of the complainant, Indian Protective Association, and that the foregoing demurrer is not interposed for any purpose of delay.

DAN'L B. HENDERSON.

Subscribed and sworn to before me this 25th day of Feb-
132 ruary, A. D., 1909.

[SEAL.]

NEENAH LAUB,
Notary Public, D. C.

Opinion.

Filed April 2, 1909.

In the Supreme Court of the District of Columbia.

No. 28005. Equity.

RICHARD D. GWYDIR et al., Complainants,
v.
CHARLES H. TREAT, Treasurer, etc., et al., Defendants.

Marion Butler and Josiah M. Vale, partners, doing business in the firm name of Butler & Vale, on Dec. 22, 1908, filed in this cause, (alleged to be consolidated with Equity causes No. 28,000, 28,001, and 28,006), their intervening petition, answer, and cross-bill, in which they state that The Indian Protective Association, a corporation, filed its bill in said Equity cause No. 28,000, praying for an injunction to restrain the defendant, Charles H. Treat, as Treasurer of the United States, from paying to the defendants, Hugh H. Gordon and Benjamin Miller, administrator, and to enjoin said Gordon and Miller from receiving, the sums of $14,000 and $6,000 respectively,

which were awarded them for services to the Colville Indians, by a judgment of the Court of Claims, the said Indian Protective
133 Association claiming an equitable lien on the said sums of money by virtue of certain contracts with said Gordon.

They also aver that said corporation filed its bill in said Equity cause No. 28,001, seeking the same character of relief against the said Treasurer, and Heber J. May, to whom was awarded $3,000 for like services, by said Court of Claims, and claiming a lien thereon, or an equitable interest therein, for the amount of the entire award.

That the complainants in this cause, (No. 28,005,) Richard D. Gwydir, et al., filed their bill against said Treasurer, and said Gordon and Miller, seeking the same relief, and claiming an equitable interest in the said sums awarded to said Gordon and Miller, for alleged services rendered to Maish & Gordon under a contract; and that Frederick C. Robertson filed his bill in Equity cause No. 28,006, against these petitioners, and said Gordon, said bill averring that these petitioners, Butler & Vale, had no interest, except for the benefit and use of said complainant Robertson, and said Gordon; and that said Robertson was entitled to a one-half interest, plus $150 out of the total sum awarded to both said Gordon and Robertson by the said Court of Claims, Gordon being awarded $14,000 and Robertson $2,000.

That the said several causes were consolidated, and receivers were appointed for the several funds, and leave granted for the petitioners to intervene, answer, or file a cross-bill, in each of said causes. That the said bill herein as to said defendant Treat, Treasurer, etc., was dismissed, and the funds were turned over to the receivers.

The petitioners then deny that either or any of the said
134 parties, except themselves, are entitled to have paid to them any of the sums of money claimed or alleged to be due them, whether by virtue of the award of the said Court of Claims, or by assignments, transfers, or conveyances, of any part of said award; and they deny that any of the several other parties aforesaid have any interest in the award or awards, save subject to the rights of these cross-complainants, and save as these cross-complainants may justly find to be due them, or either or any of them.

That the cross-complainants and interveners, Butler & Vale, are entitled to have the whole of the said several sums mentioned in the said several bills, paid over to them, the same to be by them disbursed in accordance with the act of Congress, after first deducting the cost of prosecution in the Court of Claims, including reasonable attorneys' fees; and to have the award, judgment, or decree, of the Court of Claims, purporting to find the several shares of the several claimants to the attorneys' fund or fee, set aside as null and void, and in excess of the jurisdiction of said Court of Claims; and to have a decree directing the payment to them of the entire sum of the total award made by the Court of Claims to attorneys for said services to said Colville Indians.

The petitioners then state that the Colville Indians for many years past had a claim against the United States for $1,500,000, for land ceded to the United States. That they had attorneys to prosecute

said claim, among whom were Maish & Gordon, Butler & Vale, Heber J. May, Frederick C. Robertson, Daniel B. Henderson, and
135 others. That Butler & Vale took the most active part in the prosecution of the said claim of said Indians before the committees of Congress. That the final provision by Congress, for payment of said claim, was due almost entirely to the efforts of Butler & Vale, after Maish & Gordon, and most of their associates, had failed; and this fact was well known to Congress.

By leave of Court, the petitioners filed, on Mar. 3, 1909, an amendment to their said petition and cross-bill, averring therein that at and long before the act of Congress herein referred to was passed, all contracts of attorneys with the Indians for the prosecution of said claim had expired, and none of the parties to this bill, or any other parties whatsoever, had any contracts or claims against said Indians for services as attorneys, or otherwise, in the matter of the prosecution of said claim, that were valid or enforceable at law or in equity; and all parties to the pending litigation were aware thereof before the passage of the said act of Congress.

By the original petition they then aver, that Congress, as the special guardian of the Indians, passed said jurisdictional act for the payment of the attorneys' fees after said attorneys, each and all of them, had agreed among themselves on the basis of division of the total fees to be awarded; and said act conferred jurisdiction on the Court of Claims to ascertain the total fees due by the Indians for the services of all attorneys, and directed that the proceedings should be in the name of Butler & Vale, and judgment rendered in their name, and the amount paid to them; and that they should distribute
136 the said award among the several claimants on the basis of an agreement among them; and they annex a copy of said act, marked "Butler & Vale, Exhibit A."

They then aver that they prosecuted the claim for attorneys' fees in the Court of Claims in their name, and at their expense, with the knowledge of the several other attorneys claiming interests therein.

That the said Gordon, Miller, and May, repudiated their agreements with reference to the fees, and intervened at the hearing in the Court of Claims, which court found the total fee due by said Indians to be $60,000. That so much of said decree as fixed the total fee is valid and binding. That in excess of its jurisdiction, and contrary to law, said court undertook to and did violate the terms of the said jurisdictional act, over the protest of the cross-complainants, Butler & Vale, and attempted to pass judgment, finding the several sums to which the various attorneys were entitled, and directing judgment to be entered in the several names, as follows:

Benjamin Miller, administrator	$6,000
Hugh H. Gordon	14,000
Marion Butler	20,000
Josiah Vale	10,000
Daniel B. Henderson	5,000
Heber J. May	3,000
Frederick C. Robertson	2,000

That said separate findings were not in accordance with the agreements between the parties referred to in the said act of Con-
137 gress. That the amounts awarded said Miller, Gordon, and May are far in excess of the amounts to which they are entitled under said agreements, while the amounts awarded to Butler & Vale are far less individually or collectively, than the firm of Butler & Vale are entitled to under the terms of said agreements, or than either of the members of said firm was so entitled.

That they were put to heavy expense in prosecuting the suit in the Court of Claims, none of which was borne by the other parties, and none of which was reimbursed to them by the decree therein.

They then aver that the said Court of Claims was absolutely without jurisdiction to render any judgment or decree, except in the name of Butler & Vale, for the total amount to be paid out of the funds of said Indians; and that the decree, so far as it attempted to adjudicate the several sums due each attorney, is null and void; and that the said Treasurer is without authority to pay the moneys to any one except to Butler & Vale, and so likewise are the receivers succeeding him.

That the petitioners, by reason of the fact that the sums adjudged in their names are far less than they were entitled to, and in as much as acceptance of the same could injure no one, they aver that they received and accepted from the Treasurer of the United States, the sums so awarded them individually. That they are entitled to have the entire balance of the fees so found to be due paid over to them, and to have the several findings or awards by the Court of Claims, as due to each person named therein, declared null and void; and to have a decree passed by this court, directing
138 that the balance remaining after payment of costs of suit shall be disbursed by them in accordance with the terms of the agreements referred to in said suit.

They pray for process, and for a final judgment or decree, declaring them entitled to the entire balance of said fee remaining under the control of this court; and that the same be turned over to them; and that the purported findings, awards, judgments, or decree, of the Court of Claims, declaring the distributive share of each attorney in the said fee of $60,000, be declared null and void, and of no effect, and that the same be decreed set aside, and for naught held; and for such other and further relief as to the court may seem meet and proper and the nature of the cause may demand.

To this intervening petition and cross-bill, the Indian Protective Association, Hugh H. Gordon, and other defendants, have filed a general demurrer, alleging that there is no equity in the said petition and cross-bill, and no foundation therein for any equitable relief whatsoever; and the cause has been argued and submitted on that demurrer.

The special act of Congress, made an exhibit to said bill, may be found in 34 Statutes-at-Large, page 378, the same being a provision in the act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling the treaty stipulations with various Indian tribes, and for other purposes, for the fiscal

year ending June 30th, 1907, said act being approved June 21, 1906.

The act provides $1,500,000 for said Colville Indians, in payment for the cession of lands from them, being for 1,500,000 acres
139 of land opened to settlement under act of July 1, 1892.

Jurisdiction is conferred upon the Court of Claims to *hear, determine, and render final judgment,* in the name of Butler & Vale, (Marion Butler and Josiah M. Vale), attorneys and counselors at law of the City of Washington, District of Columbia, *for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of said Indians,* in the prosecution of the claim of said Indians for payment for said land.

It then provides that said court, in determining the amount of compensation for such services, may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim.

It then directs the manner of procedure in said court, requiring the petition to be filed by said Butler & Vale within thirty days, the appearance of the Attorney General on behalf of the United States and the Indians, and that preference shall be given by the court for immediate hearing; and then providing that the Secretary of the Treasury is authorized and directed to pay the sum so awarded by said court to the said attorneys, (Butler & Vale), *upon the rendition of final judgment,* out of the said $1,500,000 set apart for said Indians, which payment shall be in full compensation to all attorneys who have rendered services to said Indians in said matter, the same to be apportioned among said attorneys by said Butler & Vale, *as agreed among themselves,* "Provided, that before any money is paid
140 to any attorney having an agreement with Butler & Vale as to the distribution of said fees, each of the same shall execute and deliver to the Secretary of the Interior, a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claim."

The position taken by the complainants in this cross-bill is, that the proceeding in the Court of Claims, so far as the award is made to the individuals named therein, (excepting as to Marion Butler and Josiah Vale), is a nullity. If that award is void as to *one* individual, it must be void as to all, without exception, and if so, then there would seem to be no title to the moneys awarded, in any of the individuals named, including the complainants in the cross-bill.

That court had jurisdiction, or it had not. If it had no jurisdiction to make award to individuals, which was the only thing done by its decree, then the title to the $60,000 awarded to said individuals, still remains in the said Indians, and the firm of Butler & Vale have no more right in this court to ask for relief in regard to the same, than they would have had before the said act of Congress was passed, giving, or purporting to give, jurisdiction to the Court of Claims.

No award was made to the firm of Butler & Vale, notwithstanding they had filed the petition as a firm, and insisted that a gross sum

should be awarded to them, sufficient to pay all the attorneys who had rendered services to said Indians in the matter of their said claim. The act, however, giving jurisdiction to the Court
141 of Claims, required that court to hear, determine, and render final judgment, for the amount of compensation *to be paid to the attorneys performing services* for said Indians, the said compensation to be ascertained from a consideration of all contracts, and of the character and value of all services rendered.

On that theory the Court of Claims took jurisdiction; and if its construction of the law is correct, it became the duty of that court to hear testimony, and to ascertain the value of the services of each attorney engaged in the prosecution of the said claim for said Indians, regardless of any agreement with Butler & Vale, fixing the value of such services.

The averment of the petition of the complainants herein is that the findings of the Court of Claims do not agree with the rights of the parties as established by the agreement said to be referred to in said act; that they have been awarded less than is their due, and the others awarded more. I take it for granted that the Court of Claims had no jurisdiction to find in favor of any attorney, that he was entitled to anything more or less than his services were worth under all the circumstances; and if the court had that power, and the agreement made with Butler & Vale fixed a different amount that any such attorney should have, that the judgment of the Court of Claims must prevail over that agreement. If there is any contradiction in the terms of the law, that contradiction must be reconciled, and the statute construed, by the Court of Claims in the exercise of the jurisdiction conferred. That court construed the law to mean for it to deal justly by all parties, and to award nothing
142 to any one unless he had justly earned it.

This court cannot affect in any way the judgment of the Court of Claims by correcting any alleged errors that that court may make, in any case of which it has jurisdiction. If its decision is wrong, the error must be corrected by appeal or motion for a new trial.

There can be no question but that the court had jurisdiction; and if they have acted contrary to the statute with reference to the method of its exercise, that would be only an error in the proceeding, and must be corrected, if at all, in that court, or by an appeal to the Supreme Court.

The court was to determine the amount of the compensation to be paid to *all* of the attorneys in the class named, after considering *all* the *services* rendered by them. This amount would be the sum of the several amounts found to have been earned by each individual or firm. It could not be properly ascertained except by first finding the several sums as on a *quantum meruit,* and adding them together.

The petitioners claim that the court had no power to so find, but must find a gross sum only, to be awarded to and divided by them among unknown or unnamed attorneys under the provisions of an unknown or undisclosed agreement, which may not be such an agree-

ment as a court of equity could under any circumstances specifically enforce.

To illustrate the fallacy of this claim, let us suppose that the defendant Gordon is only entitled to $7,000 under the agreement which is said to have been referred to in the said act. The
143 court has, nevertheless, found him entitled to $14,000. If he should receive only the $7,000 under the said agreement, the other $7,000 awarded to him would be received by some other attorney who was not entitled to it in the judgment of the Court of Claims. It was the judgment of that court that the law required in ascertaining the amounts to be properly paid, and in the case supposed that purpose of the law would be thwarted. If Gordon was only entitled to $7,000, and no one else was entitled to any more than was awarded him, then the Indians would be unjustly deprived of $7,000, if a gross sum of $60,000 had been awarded to Butler & Vale.

The actual amounts earned by each attorney or firm having been ascertained, as we must assume, in a proper way, such fund ought in equity and law to be paid to such attorney, unless some other party has some equitable claim or lien upon it, by virtue of some valid contract based upon a good and sufficient consideration, and in that event a court of equity will undertake to make the distribution between the attorney to whom the fund was awarded and the other party who may have such equitable lien or claim thereon.

The petitioners, however, have not set up any such contract, and have not shown by their cross-bill any right to any portion of the money awarded to the other attorneys which a court of equity can enforce. They have taken the sums awarded to them individually, and thus recognized the legality of such awards, and it is claimed by counsel for the other parties, that they are thereby estopped
144 from questioning the legality of any of said awards. I am disposed to think such contention is well founded.

It is sufficient, however, for me to say, that I do not think there are any facts stated in said cross-bill, which if established by proof would entitle the complainants therein to any relief in this court, and I will therefore sustain the demurrers.

JOB BARNARD, *Justice.*

145 *Decree.*

Filed April 13, 1909.

In the Supreme Court of the District of Columbia.

Nos. 28000, 28005, 28006. Equity Doc. 62.

RICHARD D. GWYDIR et al.

vs.

CHARLES H. TREAT et al.

These causes coming on to be heard upon the demurrer of the Indian Protective Association, the complainant in cause No. 28000, and Richard D. Gwydir, et al., the complainants in cause No. 28005 to the intervening petition of Marion Butler and Josiah M. Vale

filed therein, also upon the demurrer of H. H. Gordon and Benjamin Miller, Adm'r, and also upon the demurrer of Frederick C. Robertson, complainant, in equity cause No. 28006 to the cross-bill of said Marion Butler and Josiah M. Vale, heretofore filed therein, were together considered by the court, having been submitted thereto, and it is thereupon, by the court, adjudged and ordered that the said demurrers be and the same hereby are sustained, and said intervening petition and said cross-bill are hereby dismissed with costs, this 13th day of April A. D. 1909.

JOB BARNARD, *Justice.*

146 *Amendment to Decree.*

Filed April 16, 1909.

In the Supreme Court of the District of Columbia.

Eq. No. 28005. Consolidated.

RICHARD D. GWYDIR et al., Complainants,
vs.
HUGH H. GORDON et al., Defendants.

It is by the Court this 16th day of April, 1909, ordered that the decree heretofore entered in this cause on the 13th day of April, 1909, sustaining the demurrer to the Cross Bill and dismissing the Cross Bill of intervenors and cross complainants, Butler & Vale, be, and the same hereby is amended by adding thereto the following:

The cross complainants, Butler & Vale, appearing in open court noted an appeal from the above decree of the court to the Court of Appeals, and the same was by the Court allowed and bond for costs on appeal fixed in the sum of One hundred Dollars and to act as a supersedeas Fifteen thousand dollars.

By the Court:

JOB BARNARD, *Justice.*

147 *Memorandum.*

April 29, 1909.—$100 deposited in lieu of appeal bond.

Order Permitting Deposit in Lieu of Bond.

Filed May 7, 1909.

In the Supreme Court of the District of Columbia.

Eq. No. 28005. Consolidated.

RICHARD D. GWYDIR et al., Complainants,
vs.
HUGH H. GORDON et al., Defendants.

It is by the Court this 7th day of May, 1909, ordered that the decree heretofore entered in this cause dismissing the cross bill of intervenors and cross complainants, Butler & Vale, be, and the same hereby is amended as of date April 16, 1909, so that leave be, and

the same hereby is granted to the said intervenors and cross complainants to deposit the sum of $100 for costs on appeal in lieu of a bond.

JOB BARNARD, *Justice.*

148 *Directions to Clerk for Preparation of Transcript of Record.*

Filed May 20, 1909.

In the Supreme Court of the District of Columbia.

Eq. No. 28005. Consolidated.

RICHARD D. GWYDIR, J. W. EDWARDS and WENDELL HALL, Complainants,
against
CHARLES H. GREAT, Treasurer of the United States; HUGH H. GORDON and Benjamin Miller, Administrator Estate of Levi Maish, Deceased, Defendants.

The Clerk will please prepare the record in this cause for appeal to the Court of Appeals of the District of Columbia, said record to consist of:

The bill of complaint in Eq. No. 28000, Indian Protective Association vs. Treat et al.

Bill of complaint in Eq. No. 28006, Frederick C. Robertson vs. Hugh H. Gordon et al.

Subpœna and return of Marshal in Eq. 28006.

Bill of complaint in Eq. No. 28005, Richard D. Gwydir et al. vs. Charles H. Treat, Treasurer, et al.

Opinion of Court in Eq. 28005, filed Oct. 29, 1908.

Order of Consolidation of Causes and Appointing Receivers filed November 2, 1908 (minutes 82 p. 50).

Opinion of Court of Claims, being a portion of Exhibit A to answer of Def. Hugh H. Gordon to bill of complaint in Eq. No. 28006.

149 Intervening Petition filed December 5, 1908, in Nos. 28000 and 28005 by Heber J. May and Louis A. Pradt, with endorsements thereon.

Intervening petition and Cross Bill filed December 22, 1908, by Butler & Vale with endorsement of allowance.

Answer to intervening petition and cross bill of Butler & Vale filed January 21, 1909, by Benjamin Miller, Administrator, May & Pradt, attorneys.

Demurrer to petition and cross bill of Butler & Vale filed February 23, 1909, filed by Hugh H. Gordon et al., Pradt, Lipscomb and Archer, Attorneys.

Amendment to intervening petition and cross bill of Butler & Vale filed March 3, 1909, with endorsement of allowance.

Demurrer to Butler & Vale petition and cross bill filed by Indian Protective Association March 6, 1909.

Opinion of Court filed April 2, 1909.

Decree of Court of April 13, 1909, sustaining demurrer and dismissing cross bill (M. 82 p. 406).

Amendment filed April 16, 1909, to decree of court dismissing bill.
Amendment filed May 7, 1909, to decree and amendment.
Mem. of deposit for costs on appeal.
Copy of this order of designation.

KAPPLER & MERILLAT,
Attorneys for Butler & Vale.

Service of copy of above acknowledged this — day of
150 May, 1909.

CHAS. POE,
Attorney for Gwydir et al.
GEO. H. PATRICK,
Attorney for Robertson.
JAMES B. ARCHER, JR.,
Attorney for H. H. Gordon.
JAMES B. ARCHER, JR.,
For Receivers.

CHAS. POE,
Attorney for Indian Protective Asso.
MAY & PRADT,
Attorneys for Miller, Adm'r,
By M. DUGAN.
MAY & PRADT,
In Person,
By M. DUGAN.

151 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 150 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in the consolidated equity causes numbered and entitled respectively: Indian Protective Association Complainant vs. Charles H. Treat, Treasurer of the United States, et al. Defendants, No. 28000; Richard D. Gwydir, J. W. Edwards, et al. Complainants vs. Charles H. Treat, Treasurer of the United States, et al. Defendants, No. 28005 and Frederick C. Robertson, Complainant vs. Hugh H. Gordon, et al. Defendants, No. 28006, as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of June A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2035. Marion Butler et al., &c., appellants, vs. Indian Protective Association et al. Court of Appeals, District of Columbia. Filed Jun- 15, 1909. Henry W. Hodges, clerk.

Henry W. Hodges
Solicitor

In the Court of Appeals of the District of Columbia.

October Term, 1909.

MARION BUTLER, Et Al.,
Appellants.

vs.

INDIAN PROTECTIVE ASSOCIATION, Et al.,
Appellees.

No. 2035.

Brief on Behalf of Appellants.

KAPPLER & MERILLAT,
Attorneys for Appellants.

J. D. MILANS & SONS, LAW PRINTERS, 615 E STREET N. W., WASHINGTON, D. C.

In the Court of Appeals of the District of Columbia.

OCTOBER TERM, 1909.

MARION BUTLER *et al.*,
Appellants,
vs.
INDIAN PROTECTIVE ASSOCIATION, *et al.*,
Appellees.
} No. 2035.

BRIEF ON BEHALF OF APPELLANTS.

This is an appeal by the appellants from a decree of the Supreme Court of the District of Columbia dismissing on general demurrer and on the merits an intervening petition and cross bill filed by the appellants in certain consolidated causes to which the appellees were parties, which consolidated causes and the intervening petition and cross bill all concern the question as to who was entitled to have and control $30,000 of a total of $60,000, adjudged by the Court of Claims to be due by the Colville Indians for legal services in securing an appropriation of $1,500,000 by Congress in settlement of a claim the Colville Indians had against the United States. The Court of Claims had awarded $30,000 out of the total of $60,000 to appellants, and awarded the remaining $30,000

among Hugh H. Gordon, Benjamin Miller, as administrator of Levi Maish; Daniel B. Henderson (assignor to the Indian Protective Association), Heber J. May, and Frederick C. Robertson. The intervening petition sought to compel the payment of this remaining $30,000 to appellants on the ground that the award by the Court of Claims was correct, so far as finding $60,000 due for attorneys' service, but was void and in excess of the Court's jurisdiction in undertaking to direct payment of this money to any person or persons other than appellants, and in attempting to perform the duty devolved, by the statute, upon appellants of apportioning the money "as agreed among themselves" by the parties entitled. The Supreme Court of the District of Columbia dismissed appellants' proceedings on general demurrer, holding that the Court of Claims had not exceeded its jurisdiction, and from that decree of dismissal of appellants' proceedings the present bill is taken.

Statement of the Case.

The Act of Congress making appropriations for the Indian Service for the fiscal year ending June 30, 1907, approved June 21, 1906 (34 Stats., 325), appropriated the sum of $1,500,000 in full settlement of claims the Colville Indians in the State of Washington had against the United States arising out of the taking of their lands without compensation by the National Government. This legislation had been procured as the result of efforts of certain attorneys representing the Indians, all the services of the attorneys being rendered exclusively before committees of Congress. None of the attorneys had contracts enforcible either in law or equity against the Indians at the time Congress by its appropriation recognized the validity and

provided for the payment of the claims of the Indians, the contracts made by certain of the attorneys, which certain attorneys by contract subsequently had associated other attorneys with themselves in prosecution of the claim, had expired, ceased and determined by operation of the terms of the contract, the contract with the Indians under which the claim was initiated having been limited to ten years from date as the period within which recovery of the claim, prosecuted on a contingent basis, must be obtained, and the ten-year period having elapsed by several years at the time Congress granted the Indians relief, and no new contract or extension of the old contract being made.

The Act granting the Indians relief, however, provided for recognition of the fact that it was morally proper that the Indians should recognize and pay for the services rendered them, notwithstanding there was no legal or equitable liability.

The attorneyship portion of the Act of Congress, stripped of its verbiage, conferred jurisdiction upon the Court of Claims "to hear, determine and render final judgment in the name of Butler & Vale (Marion Butler and Josiah M. Vale)," attorneys of Washington, "for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of the Indians in the prosecution of the claim of said Indians." In determining the amount the Indians should pay, the Court was directed to consider "all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim." Provision was made that suit should be begun by petition filed "by the said attorneys (Butler & Vale)." And the

Secretary of the Treasury was directed "to pay the sum of money so awarded by said Court to the said attorneys (Butler & Vale) upon the rendition of final judgment," the said judgment to be in full compensation "to all attorneys who have rendered services to said Indians in the matter of their said claim, the same to be apportioned among said attorneys by said Butler & Vale, as agreed among themselves; Provided, that before any money is paid to any attorney having an agreement with Butler & Vale as to the distribution of said fees, each of the same shall execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claim."

Suit was filed in the Court of Claims promptly by Butler & Vale, who set forth the jurisdictional act, claimed the sole right under it of prosecution of the claim, and asked for a judgment of fifteen per cent of what the Indians received. Intervening petitions were filed by Hugh H. Gordon, by the administrator of Levi Maish, and by Heber J. May, asking separate judgments be rendered in their favor for services rendered by them to the Indians, instead of judgment in a single amount in the name of Butler & Vale, the intervenors repudiating as invalid agreements claimed by Butler & Vale to have been made by them. Butler & Vale claimed that all the parties had "agreed among themselves," and that under the terms of the jurisdictional act the Court of Claims had no authority to pass upon or take testimony concerning the individual services or individual rights of individual attorneys except so far as consideration of the same might be essential to an award in a total sum. Motions to dismiss the intervening petitions made by

them were overruled, and over their protest the Court of Claims made the following allowances:

To Benjamin Miller, administrator of the estate of Levi Maish, deceased	$6,000
To Hugh H. Gordon	14,000
To Marion Butler	20,000
To Josiah Vale	10,000
To Daniel B. Henderson	5,000
To Heber J. May	3,000
To Frederick C. Robertson	2,000

The Court of Claims found that the services performed "were confined exclusively to the Committees of Congress."

The Court of Claims also found: that the services were begun under a contract entered into in 1894 between the Colville Indians and Levi Maish and Hugh H. Gordon, the attorneys to receive as compensation 15 per cent of whatever amount they might recover, the amount being reduced by the Secretary of the Interior subsequently to 10 per cent. The contract was for 10 years only. This contract was the only legal authority whereby any attorney appeared for the Indians during its operation.

The Court said intervening petitions had been filed expressly disclaiming any *valid* agreement between the attorneys as to the distribution of money recovered and praying for the rendition of individual judgments. The Court held that the statute was merely directory so far as conferring authority upon Butler & Vale, that the legal authority under which the attorneys had represented the Indians had expired, and they were relegated entirely to special legislation for relief. It held that under the findings some of the intervenors had not been parties to

the alleged agreement. It held that Congress had not intended to limit the Court as respects the division of the money it might find due to the attorneys, and that such a limitation would invade the judicial power of the Court of Claims and deprive it of the power to execute its judgment.

It should be stated that the petition by Butler & Vale in the Court of Claims was filed as a partnership petition, and that it was contended by them that all of the parties "had agreed among themselves," Maish being represented in the agreement signed by Gordon as surviving partner and Gordon as surviving partner having agreements with the other claimants, whereas Maish's administrator and Gordon claimed they were not parties, and hence Gordon's signature had not bound Maish.

After the award or judgment of the Court of Claims Butler & Vale were paid by the Treasury the $30,000 awarded them. Litigation ensued promptly upon the finding of the Court of Claims over the remaining $30,000. The Indian Protective Association (of which Daniel B. Henderson is the head) began proceedings with a Bill in Equity against Gordon & Maish, suing them as "co-partners practicing law under the firm name and style of Maish & Gordon," and claiming that they, while practicing law as a firm, had been employed by the Colville Indians, and that subsequent to the death of Maish, Gordon, in January, 1901, "as surviving partner" of the firm, had entered into a written contract with Heber J. May and Daniel B. Henderson, who had assigned to the Indian Protective Association, agreeing to pay them one-fourth of the fee to be paid Maish & Gordon under their contract with the Indians in consideration of their aid in prosecution of the claim. Attached to this bill was the contract between the Indians and Levi Maish

and Hugh H. Gordon as parties of the second part. Also a written contract signed by Gordon, Henderson and May, this written contract expressly stating that it was entered into by Gordon as surviving partner of the firm of Maish & Gordon. Also an assignment of rights by May and Henderson to the Indian Protective Association. The bill sought to enjoin payments under the Court of Claims findings to Gordon or the estate of Miller.

A second suit followed with Frederick Robertson as plaintiff, and Gordon, Butler and Vale as the real defendants. It alleged that Butler & Vale were law partners, that Maish & Gordon had accepted through Maish a contract with the Colville Indians, and through Gordon had arranged with plaintiff to assist them in the matter of the Indian claim on a percentage basis, recited the Court of Claims proceedings, and claimed a lien upon the money in the Treasury, whose payment to Gordon was sought to be enjoined.

Gwydir, Edwards and Hall followed with another bill, to which Gordon and the Maish estate were the real defendants, the bill alleging that the firm of Maish & Gordon had employed complainants to procure the Colville Indians' contract for them, and that the complainants were entitled to a lien upon the award to Gordon & Maish. The Supreme Court of the District of Columbia heard the Gwydir suit and found the complainants entitled to an equitable lien thereon, the court's opinion saying, among other things, that the Court of Claims "heard the various claims for attorneys' fees and gave judgment for the sum of $60,000 in the aggregate."

By leave of court Butler & Vale filed an intervening petition and cross bill to the foregoing suits, which had been consolidated. It alleged that Butler & Vale were

law partners, and as such had entered into contracts and had prosecuted the Colville Indian claim to a successful conclusion, recited the special jurisdictional act of Congress referring the matter of compensation of attorneys to the Court of Claims, and averred that Butler & Vale were entitled to have the entire amount found due and payable by the Indians paid to them, to be by them disbursed in accordance with the law of Congress after first deducting the cost of prosecution of the claim of the attorneys in the Court of Claims, the intervening petition and cross bill saying that Butler & Vale had borne the entire costs of these proceedings. It sought to have so much of the award, judgment or decree of the Court of Claims 'purporting to find the several shares of the several claimants to the attorneys' fund or fee, and to distribute the same set aside as null and void and in excess of the jurisdiction of said Court of Claims," and that the officers of the Treasury of the United States be directed to turn over the undisbursed moneys to Butler & Vale. The intervention and cross bill asserted Butler & Vale had taken "the most active part in prosecution of the claims of said Colville Indians, which prosecution was necessarily chiefly before the Committees of Congress charged with special attention to Indian Affairs." It averred the final provision for payment was due almost solely to the efforts of Butler & Vale after Maish & Gordon and others had failed, and that "this fact was well known to Congress and the Committees thereof." It said that in consequence of these facts, Congress in providing for payment of the claim of the Indians had passed the special jurisdictional act for payment of the attorneys' fees "after the said attorneys each and all at the instance of the Committees on Indian Affairs of Congress had

agreed among themselves on the basis of division of the total fees to be awarded." It also averred that at the time Congress acted all attorneyship contracts with the Indians "had expired, ceased and determined," that none of the attorneys had any contracts or claims of any kind against the Indians arising out of prosecution of the claim "that was or were valid and lawful, or that was or were enforcible at law or in equity," and that all the parties were aware thereof, and so understood at the time Congress provided for payment of the claim. It averred that Butler & Vale had borne the heavy and burdensome costs of suit in the Court of Claims solely, with the knowledge of the other attorneys; that Gordon, the Maish estate and May had repudiated their agreements with reference to the fees and had intervened in the Court of Claims; that the court had found a total fee of $60,000 due the attorneys, and that so much of the decree as fixed the total amount of fee due was valid and binding, but that in violation of the terms of the jurisdictional act, in excess of its jurisdiction, and over the protest of Butler & Vale the Court of Claims had undertaken to divide the fee among the attorneys on a certain basis adopted and found by the court, which individual amounts were far in excess of the amounts to which Gordon, the Maish estate and May were entitled under the agreements referred to in the Act of Congress; that the amounts awarded to Butler & Vale individually or collectively were far less than the firm of Butler & Vale was entitled to under the agreements referred to in the Act of Congress, and also allowed them nothing for the expense of suit in the Court of Claims. Butler & Vale alleged that they had accepted the $30,000 adjudged in their names inasmuch as the amount was far less than

what the firm of Butler & Vale was entitled to, and inasmuch as the acceptance of the same could injure no one. The court was asked to find Butler & Vale entitled to have the entire balance of the fee found by the Court of Claims to be due by the Indians paid over to them (Butler & Vale) to be by them disbursed (after deducting costs of suit) in accordance with the terms of the agreements referred to in the Act of Congress.

Demurrers were filed to this intervening petition and cross bill, alleging in substance that the same presented no cause of action or equity, and the demurrers were sustained by the court below, and from the decree of the lower court dismissing the petition of Butler & Vale the present appeal is prosecuted.

The ground, as shown by the opinion of the court below, for dismissing appellants' petition and cross bill was that the Court of Claims was given jurisdiction of the matter, and that if it had erred, its finding was erroneous, but not without jurisdiction; that if it had no jurisdiction to make awards to individuals, then the title to the $60,000 awarded was still in the Indians, and appellants had no right in court. The court below held that if there was to be any correction of the error of the Court of Claims, it must be either in that court or by appeal to the Supreme Court.

The court also suggested as its opinion that Butler & Vale were estopped by accepting the money they had accepted from questioning the legality of any of the awards.

Assignments of Error.

Appellants make the following assignments of error:

1. That the court below erred on the whole record in dismissing the intervening petition and cross bill.

2. That the court below erred in finding that the Court of Claims either had jurisdiction to make the individual awards or its entire proceedings were a nullity.

3. That the court below erred in finding that the Court of Claims had jurisdiction to make separate individual awards to the several attorneys rendering services and in not finding that the Court of Claims' sole right to consider individual services was simply as a means of arriving at a conclusion as to the total value of all services rendered.

4. That the court below erred in not overruling the demurrers filed below and in not finding that the Court of Claims had within its jurisdiction found $60,000 owing by the Indians, and that it had exceeded its jurisdiction only in attempting, in violation of the jurisdictional act, to apportion the total award among the Indians, and that this excess of jurisdiction was severable and separable from the valid part of the judgment or finding or award of the Court of Claims.

5. That the court below erred in not finding that appellants were not estopped from claiming the balance of the awards by reason of having accepted less than the amount to which they were entitled under the agreements referred to in the Act of Congress and in not finding appellees estopped to set up this contention.

Argument.

1. The Court of Claims is a legislative court, and under the jurisdictional act had no authority beyond that expressly conferred upon it. The jurisdictional act is plain, and it was the duty of the Court of Claims to have followed its clear provisions.

The Court of Claims was created by Congress as a tribunal to aid it in the performance of duties resting upon Congress, but which duties Congress did not have the machinery intelligently to perform. It is a court of limited jurisdiction, which must act in the mode prescribed for it, and except for a special general jurisdiction recently conferred on it, can have cognizance of no controversy not clearly within the comprehension of the jurisdictional act referring a claim to it. The jurisdictional act here in question gave it no power to enter upon and adjudicate the amount due to individual attorneys out of the judgment the Court of Claims should find against the Indians as the amount that should represent their indebtedness to those who had aided them to get their claim paid.

In adjudicating the claim referred to it by the jurisdictional act the Court of Claims was limited to the rule prescribed by the jurisdictional act.

In the case of DeGroot *vs.* United States, 5 Wall., 419-33, the Supreme Court said:

> "If the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgment against that defendant, it is only by virtue of acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to parties and to the cause of action, as Congress has prescribed.
>
> "It is true that, ordinarily, when we seek for the foundation of this jurisdiction, we look to the general laws creating the court, and defining causes of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had been before committed to its control, as

> it has done more than once, it has the power to do so, *or to prescribe the rule by which such cases may be determined.* Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation; and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court *or prescribe in such case the circumstances under which alone the court may render a judgment against the Government.*
> * * *
>
> "Could that court entertain jurisdiction of the case and violate this requirement (a Congressional limitation on the court's consideration of the particular case.) Entertaining no doubt of the power of the legislative body to define the terms on which the judgments may be rendered against the Government to classes of cases, or as to individual cases, *we think the Court of Claims was bound to accept the resolution of February, 1861, as the law of the case in that court.*"

In Haycraft *vs.* United States, 22 Wall., 81, the Supreme Court said:

> "This is an action against the United States in its own Court of Claims. The appellant must, therefore, show that consent has been given to its prosecution. That being done the jurisdiction of of the court is established and he may proceed. Otherwise not.
> * * * * * *
>
> "The right and the remedy are created by the same statute, and in such cases the remedy provided is exclusive of all others."

The foregoing cases were cases of claims against the United States, but the proposition is the same where the real debtor is an Indian tribe.

In Blackfeather *vs.* United States, 190 U. S., 368, the Court said:

> "Statutes extending the jurisdiction of the Court of Claims and permitting the Government to be sued will be strictly construed, and the grant of jurisdiction, unless clearly shown, will not be implied.
>
> "Courts can exercise only such jurisdiction over Indians as Congress confers upon them and where acts give only jurisdiction as to tribal claims, individual claims cannot be considered."

This is entirely consistent with Pam-To-Pee *vs.* United States, 187 U. S., 371, holding that jurisdiction extends beyond mere entry of judgment to inquire whether the judgment has been properly executed. In the case at bar the intervenors say the court's authority is to enter judgment in name of Butler & Vale and then it can see the judgment is properly executed by requiring the Treasury to turn the money over to Butler & Vale—as indeed the act directs the U. S. Treasurer to do.

Moral obligations of the Government to Indians are exclusively for Congress to regulate, and the courts can exercise only such jurisdiction as Congress confers.

The same is true of moral obligations of the United States to citizens. Congress, for example, it is held as to French Spoliations, they being a gift or gratuity as distinguished from a legal or equitable liability, can make the judgments go to the next of kin to the exclusion of creditors. Buchanan *vs.* Patterson, 190 U. S., 353; or as to the public lands can by statute direct patent to issue to one named party, even though at the time, the Secretary of the Interior, had decided the land contest in favor of another party, against which decision the one

favored of Congress had a motion for review pending. Emblen *vs.* Lincoln Land Co., 184 U. S., 660.

The Court of Claims having, as shown, no jurisdiction except that which is expressly granted or arises by clear implication from the authority expressly granted, counsel call attention to the explicit terms of the jurisdictional act. Examination of the act discloses that it is an unusual piece of legislation, that it was enacted in the light of information in the exclusive knowledge of Congress on account of services rendered exclusively before Congress and the Committees thereof, and that it was passed after the attorneys had gotten together, as the bill alleges under orders from the committee. There is, therefore, present in the instant case to an unusual degree conditions which warrant application of the doctrine more than once enunciated by the courts that the function of the judiciary is to interpret and construe laws and not under the guise of the interpretation of construction to make laws; that with the wisdom of acts of Congress courts have nothing to do; that with the policy of acts of Congress courts have no concern; that with matters political courts have no duty; that if injustice be done in matters for which Congress is responsible, relief must be had from Congress, and that if there be even a *casus omissus,* the omission must be settled by Congress, the courts having no right because of any supposed inequity, injustice, inexpediency, or other reason to take from or add to the words of a statute. Bate Refrigerator Co. *vs.* Sulzberger, 157 U. S.; Garner *vs.* Collins, 2 Peters, 93; Board of Lake County Commissioners *vs.* Rollins, 130 U. S., 662; Rice *vs.* Minnesota Railroad Co. (1 Black), 153; Smith *vs.* Rimes, 2 Sumner (U. S.) 354.

No ambiguity appears at first reading in the jurisdictional act and none arises upon any reading except the

statute be read with a view to raise doubts where none naturally arise. The assertion that the act is directory and not mandatory means nothing. The act is plain. Its letter is not to be disregarded in favor of a presumption. (St. Paul R. Co. *vs.* Phelps, 137 U. S., 528.) The act divides itself naturally into two distinct portions, one for the ascertainment of the amount due and the other for the distribution thereof. By the first part of the jurisdictional act parties plaintiff, Butler & Vale, are provided; parties defendant, the United States and the Colville Indians, with counsel to represent the defendants, a tribunal to hear the case and a mode and time of procedure in initiation of the controversy; the basis is defined upon which the Court shall reach its conclusion as to the amount the Indians should pay for the services, rules of evidence being provided whereby the courts may consider contracts entered into, as well as services performed, in arriving at what would be a just compensation; then follow the form the judgment of the court shall take, in whose favor, and the mode of execution and satisfaction of the judgment entered. The second portion of the act directs what Butler & Vale, the parties plaintiff and judgment creditors, should do with the money awarded by the judgment directed to be found, and as to the acquittances the Indians and likewise Butler & Vale as trustees or quasi-trustees shall have as evidence of the discharge of the obligation imposed upon the Indians and the duty imposed upon Butler & Vale as representative suitors.

The act is entire and complete within itself—as much so as though the Congress had created a new tribunal to arbitrate or try the controversy committed to the court instead of referring it to a tribunal already created. The special powers conferred by the jurisdictional act the

Court was directed to exercise in a special manner, and it was confined legally within the prescribed limitations. As said by the Supreme Court of the United States in Galpin *vs.* Page, 18 Wall., 250:

> "Where the special powers conferred are exercised in a special manner, not according to the course of the common law, or where the general powers of the court are exercised over a class not within its ordinary jurisdiction upon prescribed conditions, no presumption of jurisdiction will attend the judgment of the Court. * * * The extent of the special jurisdiction or the condition of its exercise over subjects or persons necessarily depend upon the terms in which the jurisdiction is granted, and not upon the rank of the court upon which it is conferred."

As a matter of fact, the Court of Claims is not a court of general, but of limited jurisdiction, and is a legislative court in the proper and, except as to certain contract cases, even in the narrow sense of the term. Under the jurisdictional act it had no duty to perform save that of determining the aggregate or total amount due by the Indians as compensation for the services performed and results secured for them by parties who had no contracts enforcible either at law or in equity against the Indians, but as to whom the Indians owed moral obligations that Congress as a matter of gratuity or gift could recognize. Congress having plenary power in the premises, as it was creating the relief for the Indians, likewise in the same act created the relief or remedy for the persons to whom the Indians were moral obligees. The Indians as wards of the United States and incompetent as an Indian tribe to care for their own affairs, were peculiarly within the protecting arm of the Govern-

ment, whereas the attorneys were peculiarly capable of making their own agreements among themselves and of reaching agreements among themselves, as the legislation shows they had done, fixing arbitrarily or otherwise, their proportion of the total compensation. Indeed, there was danger, the Indians might be mulcted in an excessive amount if a gross judgment was not provided for. Congress, therefore, had the power, and the act shows, exercised it, of determining what matters should be submitted to the court for adjudication. Matters reserved from adjudication of the court by Congress were matters as to which the court could enter upon no inquiry—at least for the purposes of judgment, and were not incidental to the actual controversy committed to judicial adjudication. The matter committed did not include the power to determine what in equity or in law would be a proper division among the attorneys concerned, but only what should be the total, and hence, when the court undertook the apportionment, it exceeded its jurisdiction.

As said in R. I. *vs.* Mass., 12 Peters (U. S.), 657, jurisdiction is the power to hear and determine the subject-matter in controversy between parties to the suit; to adjudicate or exercise any judicial power of them. As said in Johnson *vs.* Miller, 50 Ill., App., 60:

> "The test of jurisdiction is whether the tribunal had power to enter upon the inquiry; not whether its methods were regular, its findings right, or its conclusions in accordance with the law."

In determining whether or not the Court of Claims had jurisdiction to enter upon the inquiry the rule of construction requires that the terms of the jurisdictional act shall be followed strictly and not enlarged by implication. As said in Cyc., Vol. 11, p. 771:

> "The powers conferred upon courts of limited jurisdiction must be exercised by them in the mode prescribed and cannot be enlarged by implication. No controversy not clearly within the comprehension of the law conferring the jurisdiction can be entertained by such courts."

See also Cohen *vs.* Barrett, 5 Calif., 195; Haywood *vs.* Collins, 60 Ill., 333; Bradley *vs.* Jamison, 46 Iowa, 68; Den *vs.* Hammel, 18 N. J. L., 79. It is not competent for courts to reject or disregard material parts of an act, Rice *vs.* R. R. Co., Black No. 358; Wash. Market Co. *vs.* Hoffman, 101 U. S., 112.

The suggestion is made, however, in the opinion of the court below that the Court of Claims had jurisdiction conferred upon it by the Act of Congress and that its apportionment among individual attorneys of a sum that aggregates $60,000, was not an excess of jurisdiction, but if objectionable, is simply erroneous and nothing more. To that suggestion, counsel for appellants state that by the jurisdictional act the Court of Claims was vested with no power whatever to undertake to enter judgment or make awards in the name of individual attorneys, but simply could consider their individual services as evidence to be considered by the court in reaching its conclusion as to the total due by the Indians (Hart *vs.* Gray, 3 Sumner, 339 and Hardin Co. *vs.* McFarlon, 82 D. C., 138), the court having, subject to the limitations of the jurisdictional act, the right to adopt such means as it chose of arriving at a conclusion that would satisfy its mind upon the subject-matter committed to its inquiry and determination, namely, how much should the Indians pay over to Butler & Vale as full compensation for the services of all attorneys, Butler & Vale being representative suitors.

The extent and character of the judgment of the Court of Claims was strictly limited by the jurisdictional act, and when the court undertook to render a judgment exceeding in extent and character that authorized by Act of Congress, it transcended its powers.

In Windsor *vs.* McVeigh, 93 U. S., 274, the Supreme Court of the United States said:

> "The doctrine invoked by counsel that, where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition; but, like all general propositions, is subject to the many qualifications in its application. All courts, even the highest, are more or less limited in their jurisdiction. * * * Though the court may possess jurisdiction of a cause, of the subject-matter and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law. * * * The judgments mentioned, given in the cases supposed, would not be merely erroneous; they would be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases."

Herman on Res Adjudicata, Sec. 61, p. 61, says:

> "A judgment is void when it adjudges anything which is directly contrary to law.
>
> A judgment is void when it adjudges matter not in issue.
>
> A void judgment is of no effect and can be relieved against without reversal."

In the case at bar, we have a direct contrariness between the statute and the judgment. The statute says the total amount due the attorneys by the Indians shall be apportioned by Butler & Vale as the attorneys "had agreed among themselves." The Court of Claims says it shall be apportioned by the Treasurer of the United States as per our judgment and as we think it should be apportioned, namely, so much to A and so much to B, and so on.

As said in Lincoln National Bank *vs.* Virgin, 36 Neb., 735:

> "A judgment entered by a court outside the issues submitted to its determination stands upon the same footing as one dealing with a subject-matter which is entirely foreign to its jurisdiction and is therefore a nullity."

The further intimation is made by the Court of Claims in its opinion that the Act of Congress would be unconstitutional if construed as an Act preventing the Court of Claims from making individual awards, and that it was the duty of the court so to construe the act as to prevent the inequitable result of paying X less for his services than that to which he was entitled, and paying A more than his serivices were worth, as might result if a total amount was awarded, as the result of the court after considering the value of individual services, adding the same up, and then making a total award or judgment to be disbursed by appellants under an agreement not before the court, or, if before the court, found to be different from the conclusions reached by the court as to the amount that should be awarded individual attorneys. The further objection is made to the contention of appellants that it would be inequitable and unjust to the Indians to compel

them to pay to appellants more than in the judgment of the Court of Claims the services of appellants as particular attorney, were worth, as found by the court from the evidence.

In answer to these two objections, which will be treated together, counsel for appellants reply, as set forth at the opening of this brief, that with the unwisdom, the inequity or the injustice, if there be either unwisdom, injustice or inequity, in the jurisdictional act, the courts have nothing to do, provided the Act of Congress, as contended, is clear. The things that are Caesar's are for Caesar, and the things that are for the courts are for the courts, and the things that are Congress' are for Congress. If the legislation of Congress be unwise, the remedy lay with Congress. If the legislation were inequitable, unjust or imperfect, presumably Congress would remedy the same. (See opinions of the Supreme Court heretofore cited).

As a matter of fact, there was no inequity, and injustice in the Act of Congress, because Congress alone knew who had rendered services, whose labors it was had resulted in victory for the Indians. The power of Congress over the situation was complete. The fund the Indians were to derive was created by Congress, and it had the same power over that fund that a court of equity has to award a lien to attorneys out of a fund created by a court of equity. The lands and the funds were Indian lands and funds, and with reference to Indians, the powers of Congress were supreme and plenary. Congress possessed full administrative power in the premises. As said in Lone Wolf *vs.* Hitchcock, 187 U. S., 564:

> "The power exists in Congress to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circum-

> stances arise which will not only justify the Government in disregarding the stipulations of the Treaty, but may demand in the interests of the country and Indians themselves that it should do so. * * * That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by direct legislation of Congress, is declared in Choctaw Nation *vs.* United States, 119 U. S., 1, and Stephens *vs.* Choctaw Nation, 174 U. S., 445-83. * * *
>
> "As Congress possessed full power in the matter the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. *If inquiry was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress and not to the courts.*"

See also Cherokee Nation *vs.* Hitchcock, 187 U. S., 294.

Congress in the exercise of the authority and jurisdiction conferred upon it under our system of government could have said that it would pay the Indians a stated price for the land and would have paid the attorneys who had represented the Indians a stated price for their services in prosecuting the claim, making the amounts such as it chose. It could of itself have done, as it has repeatedly done in the case of attorneys having contracts with the Indian tribes, named a specific amount as the amount that should be paid to all of the attorneys, have directed that that sum should be paid over in complete acquittance to Butler & Vale for distribution by them among all of the attorneys rendering services, in the language of the jurisdictional act, "as agreed among

themselves," or, it could have specifically directed that certain specific sums should be paid to each and every of the attorneys rendering services or could have directed that certain sums should be paid to certain of the attorneys and could have ignored the claim of services and compensation therefor preferred by other attorneys. It could have, if it had so desired, even have awarded Butler & Vale, $59,900, and appropriated only $100 for each of the other attorneys, or vice versa. Having this power, it could, if in its wisdom that was the proper course, enacted legislation as it did, directing the Court, created by it primarily to aid Congress in the discharge of its duties, to ascertain the total sum due and payable by the Indians as full payment for the result secured for the Indians, and then direct that that total sum should be disbursed by Butler & Vale and that the basis of division among the Indians should be as the attorneys had "agreed among themselves." Indeed it could have, the matter being one of grace or gift and not of legal or equitable right, have told Butler & Vale to divide it as B and V in their sole discretion deemed proper; Buchenan *vs.* Patterson and *supra.*

As to the suggestion that such legislation would be unconstitutional in that it might be paying one man more than his services were worth at the expense of another attorney who might receive less than his services were reasonably worth, is found by the court, it must be remembered that at the time Congress acted, no attorney had any claim enforcible at law or in equity against the Indians, or against the United States for the services rendered to the Indians, and it is assuming Congress was not competent to make a finding on a matter within its jurisdiction, and yet this court has not hesitated to find Congress entitled to define a street extension benefit

district. As expressly found by the Court of Claims, and as shown by the records, all contracts between attorneys and Indians had expired. No attorney had any obligation or any property right. The furthest stretch of legal contention would be to claim the attorneys had inchoate claims. But an inchoate claim and its recognition as against the United States or as against Indians, the wards of the United States, rests wholly with Congress, which has the duty of protecting imperfect rights of property, the courts having jurisdiction only as they are vested, specially by Congress, with jurisdiction. "The duty belonged to the political department of the Government and might either be discharged by Congress itself, or be delegated by Congress to a strictly judicial tribunal or to a Board of Commissioners."

U. S. *vs.* Baca, 184 U. S., 656.
U. S. *vs.* Gardoval, 167 U. S., 292.
Rio Arriba *vs.* U. S., 167 U. S., 306.

Whatever obligation there was was a moral obligation and one resting peculiarly with the political Departments of the Government. That branch of the Government was peculiarly fitted to pass upon the moral obligations as was its sole prerogative. Counsel for appellants strenuously deny that there was any inequity or injustice in division of the fees on the basis that the parties "had agreed among themselves," and with equal strenuousness deny that as a matter of fact all the parties concerned have not agreed among themselves and made valid and binding agreements—contracts to which as a matter of public policy they should be held on the ground that all persons *sui juris* have freedom of contract.

Is not the wisdom of Congress, with full knowledge of the claim that was taking a million and a half dollars out

of the National Treasury, of the services performed that had resulted in recognition of the claim for a failure to persuade Congress of its justice on the part of the attorneys other than Butler & Vale, as likely to be right and just as the findings of the Court of Claims rendered upon information that came to it at second hand? The fountain head of justice may rest as well with Congress in things political as with the courts. Judicial opinions may err, but better the law book than the sword or chaos.

The Court of Claims in its opinion seems to have regarded the Act of Congress as an invasion of the prestige of the Court. It speaks of the Act of Congress as requiring it to do inequity and as limiting its judicial functions and, if it is construed as appellants construe the act, as taking from it the power to execute its judgments. We respectfully submit that while Congress might be said, as to the Court of Claims, to have this power, it did nothing to take from the Court of Claims the power and prestige with which that special tribunal of special powers was invested.

The situation is not unlike that with reference to the French Spoliation claims, in which Congress originally invested the Court of Claims solely with power to determine the amount and validity of claims arising out of French Spoliations, but without any jurisdiction to pronounce judgment or say to whom they should be paid, and as to which Congress ultimately directed that the award should go to the next of kin, notwithstanding the parties spoliated had been pushed to insolvency by the spoliations, and their property and affairs in many cases by courts turned over to receivers. Such legislation, it was held, was valid, since, as the fund was a gratuity or matter of grace and not a matter of legal right, Congress could make the award to whomsoever it chose.

In Patterson *vs.* Buchanan, 190 U. S., 360, the Supreme Court thus put the case:

> "It is plain that the Court of Claims did not regard it as its duty under the (French Spoliation claims), Act of 1885, to investigate and determine the rights of each individual of a class, but only to determine the amount and validity of a claim * * * the particular individuals of the class would be matter for subsequent investigation by some other tribunal."

In Blagge *vs.* Balch, 162 U. S., 439, it was held that the result of the Act of Congress was "to place the payments prescribed under the Act of 1891, within the category of payments by Congress, and not as of right as against the Government. * * * Congress could, of course, have given this fund to anyone it chose, as it was a case of gratuity in any event."

The fact that in determining the total amount owing by the Indians and payable by them out of the fund created by Congress it might be necessary in order for the court sitting in effect as a jury to know the services of or the contracts held by each and all of the attorneys in deciding what should be its aggregate judgment, did not make it either a matter of jurisdiction or proper for the court to enter up separate judgments. The situation was not unlike that in which the title to real estate arises incidentally and is not the thing in issue in a law suit, although a decision on the question of title may be material to a determination of the cause. In such cases the finding of the court is not *res adjudicata* as to the title to the real estate and the jurisdiction of the court in the particular controversy does not go to the necessarily incidental matter. See Randolph *vs.* Kraemer, 106 Calif.,

199; Sipl *vs.* Holliday, 62 Ind., 4; Knight *vs.* Dunbar, 83 Me., 359; Judd *vs.* Arnold, 31 Minn., 430; Buttoro *vs.* Whalen, 64 N. J. L., 461; Cannavan *vs.* Conklin, 1 Daly, 509.

The suggestion that the court, if appellants' contention be correct, would be prevented from executing its judgment, is not well taken, and the case of Pam-To-Pee *vs.* United States, 187 U. S., 378, has no application. Counsel do not contend that the Court of Claims has not under the jurisdictional act, the power to see to the execution of its lawful judgment in the premises. Counsel contend respectfully, that the Court of Claims and the Court below, confounds judgment and execution. We admit that a court has inherent authority, unless sometimes where a tribunal of special and limited jurisdiction, to inquire into the execution of the judgment it renders. What counsel contend in the case at bar is that the court has no power, when directed by the jurisdictional act to enter up a judgment in the name of Butler & Vale, to enter up judgment in the names of three or four other persons. The jurisdictional act gave it authority to enter up a *judgment* in the name of Butler & Vale and conferred on the court authority to see that that judgment was *executed* by the payment of the judgment to Butler & Vale. The court had vested authority to see that the parties, made parties plaintiff by the jurisdictional act and made the parties in whose name the judgment should run, should get the money. It was not charged with following up the execution of the judgment by seeing that Butler & Vale did disburse that money as the parties "had agreed among themselves." Congress in its wisdom had seen fit to make Butler & Vale the trustees for the disbursement on an agreed basis of the judgment. It had

made them the representative suitors, and if they did not honestly perform their trusteeship, the courts of equity were open to the parties aggrieved. The Court of Claims had no more function to perform with reference to this matter than did the Supreme Court of the United States primarily in the case of Smith *vs.* Swormsted, 16 Howard, 288, in which it directed judgment to be entered in the name of certain persons who appeared as complainants by reason of representative capacity conferred upon them by the conference of M. E. Church to bring suit and collect judgment in their individual names for the share due to all the superannuated ministers of the Methodist Church South, out of the assets of what was known as the "Book Concern" of the Methodist Church before the War.

In the case of Pam-To-Pee, *supra*, there were no representative suitors, there was not as the court, a tribe with a chief, with head men or others who could be said to stand in the place and stead of a class. The Supreme Court specifically said in that case:

> "This is not an ordinary judgment at law in which the plaintiff entitled to receive and the defendant bound to pay are both named, and in which the absolute duty is cast upon the defendant to see that the right party is paid, but a case in which the amount of fund for distribution was determined and directions made in ascertaining the beneficiaries of that fund."

We hold that there is applicable to this case the statement of the Supreme Court in the Pam-To-Pee case that it would be "an anomaly to hold that a court having jurisdiction of a controversy and which renders a judgment in favor of A (Butler & Vale) against B (The Colville In-

dians) had no power to inquire whether that judgment has been rightly executed by a payment from B (The Colville Indians) to C (Levi Maish et al.).

2. The Court of Claims' findings are certain, the *lawful* judgment is shown, and the parts of the judgment in excess of jurisdiction are severable and separable.

The mode by which a court or jury arrives at a conclusion is not material. The court will not inquire into the processes of the human mind, West *vs.* Hitchcock, Even as to a United States executive department it will not consider whether or not that department has considered, or what weight it has given to, pieces of evidence before it. It is sufficient if the conclusion appears positively or the conclusion or verdict or judgment is so set forth that reduction to certainty is a mere matter of absolute mathematics. In the pending case the Court of Claims has found $60,000 to be the amount the Indians should pay to all the attorneys for the services rendered to them. The amount is a mere matter of addition of the attempted apportionment by the Court among the several attorneys.

All that is void in the award of judgment of the Court of Claims is that part in which the Court attempts to apportion the respective amounts due to the several attorneys. The law is well settled that if the unconstitutional parts of a statute can be separated and segregated from the constitutional parts, the statute shall be upheld as to the valid parts; that if an award is invalid because in part it exceeds the authority of the tribunal, the part within the submission shall stand if the part in excess can be clearly separated.

The principle was thus stated in DeGroot *vs.* United States, 5 Wall., 419:

> "It is not always that an award is invalid because in some respects it exceeds the submission, for it is said that if the part which is in excess can be clearly separated from the remainder which is within the submission, the latter may stand. This, as a general rule, is true, but it is subject to some qualifications, one of which is expressed by Chief Justice Marshall, speaking for the Court in Carnochan *vs.* Christie, 11 Wheat., 446, to the effect that the award to be valid ought to be in itself a complete adjustment of the controversies submitted to the arbitrators."

In the instant case the finding and judgment of the Court of Claims as a total is a complete adjustment of the controversy submitted to it, namely, the total amount to be paid out of the Indians' fund for legal services; the excess of the Court is clearly severable, being simply the part purporting to apportion the total judgment as the court thought it ought to be apportioned, instead of by Butler & Vale on the basis that the parties "had agreed among themselves." The Court of Claims had simply, after performing its function, gone outside its jurisdiction and made a separate and severable extra and unauthorized finding.

> "Where the good part of an award is severable from the bad, the award may be upheld as to the good and the residue may be rejected."
> Skillings *vs.* Coolidge, 14 Mass., 43;
> Walker *vs.* Walker, 28 Ga., 140;
> Day *vs.* Hooper, 51 Me., 178;
> Rogers *vs.* Tatum, 25 N. J. L., 281;
> Parmalee *vs.* Allen, 32 Conn., 115.

Similarly in U. S. *vs.* Hodson, 10 Wall., 395, the Court said:

> "It is a settled principle of law that where a bond contains conditions, some of which are legal and some illegal, and they are severable and separable, the latter may be disregarded and the former enforced. * * * In the well considered case of Ohio vs. Finley, 10 Ohio, 51, the bond was conditioned that the county treasurer should perform his official duties according to law. The statute, as in the case before us, was specific in its requirements as to what the bond should contain, and the condition, it was admitted, largely exceeded them. The Court said: 'That part which is legal is marked out in the statute book itself, and is, therefore, as completely severable from the rest as if the two parts were separated in the condition of the bond.' "

3. Appellants are not estopped. They protested at every stage of the procedure. They had a lawful right not to appeal but to accept payment of the part to which all parties admitted they were entitled and to attack independently and collaterally the excess of jurisdiction, it being a void finding by the Court, and the whole $60,000 being payable to Butler & Vale under the statute.

The principle of estoppel proceeds upon the theory that a party shall not be heard to take inconsistent positions as may suit the party's interest. It is a sword and shield raised by the law for the promotion of justice, and never operates where public policy or fair dealing indicates the contrary. A void judgment is of no effect and can be relieved against without reversal. A judgment in excess of jurisdiction is void and may be collaterally attacked, whether the title to the void judgment be in the original party or his privy.

> "Although a court may have jurisdiction of a case, yet if it appears from the record that it did

> not have jurisdiction to enter the decree and the particular judgment thereon that it did enter, then that decree and judgment may be collaterally impeached."
>
> *In re* Nielsen, 131 U. S., 118;
> Ritchie *vs.* Sayers, 100 Fed., 520.

A party may show that the judgment rendered by the Court was beyond its power. Cooper *vs.* Reynolds, 10 Wall., 308; Cornet *vs.* Williams, 20 Wall., 226.

If the void part of the judgment be separable and severable, then it is necessary to attack only the illegal part, (see cases heretofore cited).

A judgment pronounced by a tribunal having no authority to determine the matter adjudged, may be impeached in any proceeding, collateral or other, where it is drawn in question. Herman on Estoppel and *Res Adjudicata,* Section 58.

> "An estoppel can never be allowed where it would itself perpetrate fraud, work injustice, or fail to protect the innocent."—Herman on Estoppel, *supra,* Section 14.

> "The principle of estoppel has its foundation in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice where nothing else known to our jurisprudence can, by its operation, secure those ends. If parties are in *pari delicto,* the law will help neither, but leaves them as it finds them. But if two persons are in *delicto,* but one less so than the other, the former may, in many cases, maintain an action for his benefit against the latter."
>
> Daniels *vs.* Tearney, 102 U. S., 415.

Appellants having a lawful right, collaterally or independently, to attack the excess of jurisdiction by the Court of Claims cannot be held estopped by reason of having resorted to redress according to lawful methods. Estoppels work in conformity with and not in hostility to law. Appellants were under no obligation to deprive themselves of interest on money to which they were entitled, and to which all parties conceded they were entitled, in order that they might claim rights in the part of the fund in dispute. They in nowise have caused the appellees to act to their (appellees') injury. Appellees, indeed, could not be heard, we respectfully submit, and are estopped to raise any contention of estoppel against appellants, because the appellees cannot be heard to say in this court that the finding of the Court of Claims, which they themselves requested and brought about, did not give appellants the right to take the money found by the court due appellants. It would have been the duty of the Treasurer of the United States himself to have raised the point appellants now raise, if convinced the Court of Claims has exceeded its jurisdiction.

The concession in the pleadings is that the money accepted by appellants is less than that to which they are entitled under the agreements among the parties referred to in the jurisdictional act. The appellees themselves requested and demanded separate judgments. The apportionment of the remaining $30,000 being void is not binding against appellants, and no principle of estoppel or election prevents them taking the payment conceded by all parties to be theirs, and then making claim on the balance of the fund for disbursement by them as *quasi*-trustees in accordance with the Act of Congress, since otherwise the effect would be to deny them the right to

attack a void finding except at the expense to themselves of foregoing a just claim and right.

Public policy requires that this court, if convinced that the Court of Claims has exceeded its jurisdiction, as contended by appellants, shall see to it that the intention of Congress as expressed in its statutes, is carried into execution.

Appellants, as their cross bill and intervention states, asked the court below to award them the remaining fund in order that they might disburse the same in strict accordance with the Act of Congress. That the present state of things has been brought about is due to appellees. Estoppel proceeds upon the ground one party knows facts which the other party does not, and by his words or conduct misleads another party to his injury. It never operates any more than does a receipt against a party not in fault (Ency. Law, 2d Ed., subject, Receipts), and likewise it never operates where the facts are known to all parties and each is free to draw his own conclusion from the known facts. Sturm *vs.* Boker, 150 U. S., 336.

There must be some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud. Where the facts are known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel.

Brant *vs.* Va. Coal Co., U. S., 326;
Steel *vs.* St. L. Smelting Co., 106 U. S., 447.

If there be any exceptions whatever to this doctrine it is that where one of two innocent parties must suffer the law will favor the more innocent relatively of the two. In this case there can be no such conclusion reached, first,

because as matter of fact appellants can, if awarded the fund in controversy and tender themselves ready and willing to disburse it as the parties "had agreed among themselves," and, second, because appellees, and not appellants, are responsible for the Court of Claims' assumption of a jurisdiction not conferred, and for complications that, had they not appeared in the Court of Claims, would have been impossible of existence.

We respectfully submit that under the concessions of the demurrer to appellants' pleading the decree below should be reversed and the cause remanded for further proceedings.

Respectfully submitted,

KAPPLER & MERILLAT,

Attorneys for Appellants.

In the Court of Appeals of the District of Columbia.

October Term, 1909.

MARION BUTLER, ET AL.,
Appellants,
vs.
INDIAN PROTECTIVE ASSOCIATION, ET AL.,
Appellees.
} No. 2,035.

Brief on Behalf of Appellees.

LOUIS A. PRADT,
HEBER J. MAY,
CHAS. POE,
JAMES B. ARCHER, JR.,
of Solicitors for Appellees.

FRANC. E. SHERY, PRINTER, 1008 E STREET.

In the Court of Appeals of the District of Columbia.

October Term, 1909.

MARION BUTLER, ET AL., *Appellants,*
vs.
INDIAN PROTECTIVE ASSOCIATION, ET AL., *Appellees.*
No. 2,035.

BRIEF FOR APPELLEES.

This is an appeal from a decree of the Supreme Court of the District of Columbia sustaining demurrers to and dismissing appellant's intervening petition and cross bill filed in certain consolidated causes in the lower court.

STATEMENT OF THE CASE.

Congress, by act approved June 21, 1906 (34 Stat. at L., 378), provided for the payment of $1,500,000 to certain Indians residing on the Colville Reservation in the State of Washington for lands ceded to the Government. By the same act jurisdiction was conferred on the Court of Claims to ascertain and award attorneys' fees in the following terms:

JURISDICTIONAL ACT.

"Jurisdiction is hereby conferred upon the Court of Claims to hear, determine and render final judgment in

the name of Butler and Vale (Marion Butler and Josiah M. Vale), attorneys and counsellors at law, of the City of Washington, District of Columbia, for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of said Indians in the prosecution of the claim of said Indians for payment for said land, and in determining the amount of compensation for such services the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim. Petition hereunder shall be filed in said court by the said attorneys (Butler and Vale) within thirty days from the passage of this act, and the Attorney-General shall appear on behalf of the defendants, and said cause shall be given preference for immediate hearing in said court, and the Secretary of the Treasury is hereby authorized and directed to pay the sum of money so awarded by said court to the said attorneys (Butler and Vale) upon the rendition of final judgment, out of the said sum herein set apart or appropriated for the benefit of said Indians, and payment of said judgment shall be in full compensation to all attorneys who have rendered services to said Indians in the matter of their said claim, the same to be apportioned among said attorneys by said Butler and Vale as agreed among themselves: *Provided,* That before any money is paid to any attorney having an agreement with Butler and Vale as to the distribution of said fees, each of same shall execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claims."

Pursuant to this statute appellants here, Butler and Vale, filed in the Court of Claims a petition for allowance of attorneys' fees out of the funds of the Indians (Rec. 59), in their own name (on June 26, 1906). Intervening petitions

were filed in said cause by appellees, Gordon, Miller and May, among others (R. 59) and over the protest of Butler and Vale the Court of Claims made the following award of the moneys so appropriated, namely:

To Benjamin Miller, administrator of Levi Marsh, deceased	$6,000
To Hugh H. Gordon.....	14,000
To Marion Butler	20,000
To Josiah Vale	10,000
To Daniel B. Henderson.....	5,000
To Heber J. May.....	3,000
To Frederick Robertson	2,000

The court made no lump or aggregate award as such but decided it was bound to award individual sums to each attorney entitled (R. 44-52) upon a *quantum meruit* basis. Butler and Vale did not avail themselves of their right of appeal but accepted and received the sum of $30,000 awarded them (R. 60).

Appellees, Indian Protective Association, Frederick C. Robertson and Gwydir, Hall and Edwards filed in the Supreme Court of the District of Columbia separate original bills (R. 1, 17 and 33) against Charles H. Treat, United States Treasurer, Hugh H. Gordon, Benjamin Miller, administrator of Maish, Butler and Vale and the Secretaries of the Treasury and Interior, asserting equitable liens arising out of contracts, against the sums of $14,000 and $6,000 awarded to Gordon and Miller respectively, under which bills being consolidated, receivers were appointed who took into their possession $22,000, being the sum awarded to Gordon, Miller and Robertson (R. 42). No other sums came under the control of the court, and no other attorney who received an award from the Court of Claims is a party to this cause in respect to such award.

The several bills were dismissed as to the Treasurer of the United States and the Secretaries of the Treasury and Interior on November 2, 1908 (R. 42-58), and from such dismissal Butler and Vale prosecuted no appeal.

On December 22, 1908, appellants, Butler and Vale, filed their cross-bill against the remaining parties to the cause praying no relief against the Treasurer of the United States or the Secretaries of the Treasury or Interior or against Daniel B. Henderson and Heber J. May in respect of the respective awards of $5,000 and $3,000 to them, but praying that Butler and Vale be decreed entitled to the "entire balance remaining under the control" of the court ($22,000), and that the individual awards to the attorneys named by the Court of Claims be "declared null and void and of no effect and that the same be set aside and for naught held" (R. 61).

To this cross-bill the appellees interposed a general demurrer which was sustained, and the cross-bill dismissed (R. 74).

ARGUMENT.

The cross-bill was bad on demurrer and the decree below was right.

I.

This is not a suit to establish or enforce a lien or equity arising out of contract or the relations of the parties. The cross-bill prays in substance (R. 61) that the judgment of the Court of Claims be "set aside" as void, and that for that reason the cross-complainants be decreed entitled to the *entire balance of the fee awarded to the attorneys,* namely, the sum of $22,000 in the hands of the receivers herein.

The relief thus prayed is predicated upon the *alleged* right of the appellants to have the entire award under the

jurisdictional act in pursuance and because of the letter of the statute, that judgment be "rendered in the name of Butler and Vale," for distribution as agreed among themselves. The court is not asked to establish and enforce a contract among the parties. It is only incidentally mentioned (R. 59, par. 8) that Congress passed the jurisdictional act *after the said attorneys* each and all, at the instance of committees, *"had agreed among themselves upon the basis of division of the fees* to be awarded." A glance at appellants' brief is sufficient to show that they put their case upon their *alleged* right, under the jurisdictional act, to have the judgment rendered in their name, and neither their cross-bill nor their brief seeks to establish or enforce any ordinary equitable right, but the latter labors to establish the proposition that all the proceedings of the Court of Claims, beyond the finding of a total fee of $60,000 to be due, are in excess of the jurisdiction conferred, and that they are entitled under the letter of the act, to have judgment for so much of that sum as is within the control of the equity court. This is but an effort to obtain a vicarious reversal of the judgment of the Court of Claims. Yet it is not pretended that this court has the power to control the proceedings of the Court of Claims. The only complaint that the appellants are prejudiced by the judgment of the Court of Claims is contained in paragraph 10 of the cross-bill (R. 60), namely, that the award to Butler and Vale was *"far less than the amount they were entitled to receive."*

It is not alleged that they were entitled *by reason of a contract* to more than they received, and if it were, the allegation would not be admitted by the demurrer, because of the familiar principle that a demurrer admits only what is well pleaded.

Appellees maintain that equity has no jurisdiction to re-

view, reverse or correct the proceedings of the Court of Claims.

Equity has no supervisory power over tribunals of special jurisdiction.

5 Wall. (U. S.), 413, Ewing *vs.* St. Louis.

This court is not shown a contract and asked to enforce it, diminishing, if necessary, the amount in the hands of Butler and Vale. What showing is there that the $30,000 awarded to Butler and Vale is equitable under any such contract, even if it existed?

In all the cases cited on the appellants' brief the equity court had jurisdiction over the parties or the subject matter *because of independent* equities and dealt with the judgments of tribunals of special jurisdiction only incidentally, and in no case cited by appellant did the court "set aside or hold for naught" the judgment of the special court. Having jurisdiction of the subject matter or the parties, equity proceeded to administer appropriate relief *notwithstanding* the void judgment, which it treated simply as a nullity.

Equity does not cancel or set aside mere nullities

1 App. D. C., 343, Welden *vs.* Stickney.
34 Wash. L. R., 278, Monongahela Co. *vs.* Taft.

We submit that the true rule is that if equity has jurisdiction to administer a subject matter upon grounds of ordinary equitable cognizance and its jurisdiction is so invoked, it will proceed to administer appropriate relief *upon those grounds;* but not in pursuance of any power or jurisdiction to review or reverse the judgment of the tribunal of special jurisdiction.

It will act with reference to such proceedings *only upon some distinct ground of equitable interposition.*

4 N. C., 30, Thomas *vs.* Williams.
9 Wheat. (U. S.), 532, Smith *vs.* McIvan.

The foundation of the relief granted in equity against judgments arose in reference to the courts of the common law and as to them Story states the rule to be as follows:

> "It neither assumes any authority over the court in which those proceedings are had nor denies its jurisdiction. It (the process of the equity court) is granted *on the sole ground that from certain equitable circumstances,* of which the court of equity granting the process *has cognizance,* it is against conscience that the party inhibited should proceed in the cause.
>
> 2 Story's Eq. Jur. Pru., Sec. 875.

In the case at bar the equity court has no concurrent jurisdiction. Before the passage of the special jurisdictional act no court had power to award compensation to Butler and Vale or any other attorney for services rendered to the Indians. No jurisdiction was conferred on the Supreme Court of the District of Columbia by the jurisdicitonal act, and in the absence of a distinct ground of equitable cognizance, no power is vested in that court to determine the matter in controversy.

It is claimed that there was a valid finding of a total fee of $60,000 to be due from the Indians to the attorneys, payable under the act to Butler and Vale (R. 59). But no relief is prayed against the Secretary of the Treasury or United States Treasurer, and by not appealing, appellants acquiesced in the dismissal of the original bills as to them (R. 42)

If the appellants were seeking relief against the Secretary of the Treasury they could not proceed in equity because a plain, adequate and complete remedy exists at law by mandamus.

13 App. D. C., 38, Roberts *vs.* U. S.

Particularly is this true in view of the direct provision of the jurisdictional act that the Secretary of the Treasury "*is*

hereby authorized and directed to pay the sum of money so awarded by said court to the said attorneys (Butler and Vale) upon the rendition of final judgment out of the said sum hereby set apart or appropriated for the benefit of said Indians."

No relief is prayed against the Court of Claims. This court is not asked to award a new trial or reverse the judgment and compel the entry of a new or different one, and has no power to do so. If such relief is necessary or desirable and the judgment of the Court of Claims was in fact void for exceeding its jurisdiction the remedy would not be in equity.

> "Courts of equity will not interfere with the determination of inferior tribunals of special jurisdiction * * * unless the proceedings sought to be annulled or corrected is *valid upon its face* and the alleged invalidity consists *in matters to be established by extrinsic evidence*. In other cases the review and correction of proceedings must be obtained by the writ of certiorari.
>
> 5 Wall. (U. S.), 413, Ewing *vs.* St. Louis.

If the judgments of the Court of Claims are void it is because that court was not empowered by the act to render them, and in such case, as all are presumed to know the law, they are invalid on their face and may be treated as nullities at law.

> 1 App. D. C., 343, Welden *vs.* Stickney.
>
> See also the rule announced in Ewing *vs.* St. Louis, 5 Wall. (U. S.), 413, *supra,* certiorari would be the remedy.

From the above appellees deduce and maintain that appellants are proceeding against a portion of the aggregate sum of $60,000 awarded by the Court of Claims by individual judgments; that the bill alleges or establishes no equitable lien upon or title to the same which an equity court can de-

cree or enforce as being within the ordinary cognizance of equity, and that no supervisory jurisdiction exists in the equity court to grant relief in this case because of error or excess of jurisdiction by the Court of Claims.

If relief were sought because a fund had been judicially created by the Court of Claims and original or concurrent jurisdiction existed in the equity court, the fund is not before the court because only $22,000 is impounded. Appellee, May, is not before the court in respect to anything except his intervening petition for fees as attorney in the Court of Claims for appellee Miller (R. 52); the $3,000 awarded May is not before the court, neither Henderson nor the sum of $5,000 awarded him (see findings, R. 60) is before the court, and Butler and Vale have withdrawn from the Treasury $30,000 (R. 60) which they do not bring in or tender. They neither do equity nor bring in the parties or funds necessary to enable the court to administer the fund according to the equities of the parties. These requirements must be complied with even if their cross-bill stood upon equities within the cognizance of the court, otherwise full relief can not be administered, and their absence is urged as grounds sufficient to render the cross-bill demurrable.

2.

Whatever jurisdiction that court had was invoked by the appellants when they filed their petition (R. 59, par. 9) for allowance of attorneys' fees out of the funds of the Indians in the hands of the United States. It is not denied that the machinery of the court was thus set in motion.

The Court of Claims, unlike a court of general jurisdiction, could exercise its judicial functions only because of the jurisdictional act, and only for the substantial purposes thereof. And it was confronted at the outset with a vital conflict in the language of the statute.

The provision that it should *"hear, determine and render final judgment in the name of Butler and Vale,"* isolated from the remainder of the statute, conferred or defined no ministerial or judicial duty or authority. It is equally meaningless when read in connection with any other portion of the statute than the clause *"for the amount of compensation which shall be paid to the attorneys who have performed services, etc."* The latter clause is therefore the chart by which the scope of its inquiry is marked out and the substantial matter for determination, and it is not susceptible of any other meaning or construction than the literal import of its words. This is so because the words cannot be narrowed to the *compensation earned* by the attorneys. The inquiry directed is as to the compensation *"which shall be paid* to the attorneys who have performed services."

If the statute contained nothing further, the words "render judgment in the name of Butler and Vale" would be rejected as a matter of course and the finding which resulted from the inquiry as to the compensation which *shall be paid to the attorneys* who have performed services for the Indians would naturally inhere in the judgment of the court because it is the thing for which judgment is to be rendered.

But the provision (R. 45) *"the same to be apportioned among said attorneys by said Butler and Vale as agreed among themselves"* is relied upon as circumscribing the power and jurisdiction of the Court of Claims to the mere ascertainment of the total fee due from the Indians and award thereof to Butler and Vale. It is submitted that such a determination is irreconcilable with a judgment for the amount of compensation "which *shall be paid* to the attorneys who have performed services" for the Indians. And this conflict is emphasized by the conceded existence of other attorneys in the same category, and by the undisguised pur-

pose and claim of right advanced (R. 60, par. 10) to distribute the same in proportions different from those adjudged by the Court of Claims, and the literal enforcement of this inconsistent provision would have defeated the clearly stated direction and purpose of the act.

In the face of such a conflict that court wisely rejected the construction contended for and adopted that, furnished by the context of the whole act, which was more in accord with its manifest purpose.

This it was competent for the court to do.

Endlich on Stat. Const., Sec. 430.

Particularly as the mode of procedure was only incidental to the real object, purpose and scope of the act.

30 L. J. ch., 380, Liverpool Bank *vs.* Turner.

To direct the Court of Claims to "hear, determine and render *final* judgment for the amount of compensation *which shall be paid* to the attorneys who have performed services" for the Indians and by the same statute to authorize Butler and Vale to distribute the award in a different way would be to deprive the court of its power and authority over its judgment and to confer upon Butler and Vale the judicial power to distribute a judgment, in which they were interested as parties litigant, upon their own discretion.

As said by the Court of Claims, in its decision, to have so enacted "would have been a senseless and meaningless proceeding, obnoxious to the law and devoid of justice."

Such a construction would have conferred no jurisdiction whatever on the Court of Claims.

> "The jurisdiction of a court is not exhausted by the mere entry of a judgment. It always has the power to inquire whether that judgment has been executed. It would be anomaly to hold that a court having juris-

diction of a controversy, and which renders a judgment against A in favor of B, had no power to inquire whether that judgment had been rightly executed by a payment from B to C. If the Court of Claims had no authority to inquire into the execution of its judgment, it was shorn of a part of the ordinary jurisdiction of a court."

187 U. S., 371-382-383, Pain-to-Pee *vs.* U. S.

"Jurisdiction is defined to be the power to hear and determine the subject matter in controversy in the suit before the court, and the rule is universal, that if the power is conferred to render the judgment or enter the decree, it also includes the power to issue process to enforce such judgment or decree."

12 Pet. (U. S.), 718 Rhode Island *vs.* Mass.
6 Wall. (U. S.), 166, Riggs *vs.* Johnson Co.
111 U. S., 176, Covell *vs.* Herman.

The provision of this act which would rob the Court of Claims of its judicial power and place in the hands of Butler and Vale the adjudication of the rights of all parties in interest must be rejected because its operation would be invalid and absurd, and would wholly defeat the meaning and purpose of the act.

That in such case the court is empowered to reject the obnoxious provision is well settled by authority.

93 U. S., 364, Heydenfelt *vs.* Gold, etc.
47 Minn., 272, McCormick *vs.* West Duluth.
4 Ind., 280, Dickerson *vs.* Nelson.
16 Kan., 587, Kan Pac. Ry. *vs.* Commissioners.
8 Ind., 191, State *vs.* Williams.
Endlich Interp. Stat., Sec. 183.

The Court of Claims found as a conclusion of law that no such agreement existed as was contemplated by the act (R. 47), and the direction to enter judgment for Butler and Vale

for distribution by them according to the so-called agreement, being incapable of enforcement, the proceedings would have failed. But finding full and complete authority in the act to grant relief to all the parties, including Butler and Vale, it adopted the construction contended for by appellees upon the well settled principle that courts will not deney redress to suitors because a portion of the statute may fail, if sufficient remains upon which to predicate the relief intended.

105 U. S., 305 Supervisors *vs.* Stanley.
95 U. S., 80, Keokuk Packing Co. *vs.* City of Keokuk.
28 U. S., 305, Bank *vs.* Lessee of Dudley.
103 U. S., 118, Florida Cent. Ry. *vs.* Schutte.

The clause directing the Court of Claims to render judgment in the name of and for distribution by Butler and Vale of compensation earned by appellees herein is in violation of the Fifth Amendment of the Constitution as depriving them of their right of action and property without due process of law. This Constitutional limitation has been held to apply to Federal powers (see 124 U. S., 200, *In re* Sawyer).

> "The legislative power cannot directly reach the property or vested rights of the citizen by providing for their forfeiture or transfer to another without trial and judgment in the courts."

Cooley's Const. Lim., 5th Ed., 110.
11 Ill., 376-382, Newlands *vs.* Marsh.

It is set up in appellants' cross-bill (R. 58, par. 8) that the Indians employed a number of attorneys to represent them in the prosecution of their claim, among whom were appellees or some of them, and Congress, by the jurisdictional act recognized their right to receive compensation therefor and in terms authorized the Court of Claims to consider all contracts in ascertaining the compensation to be paid them. Certainly the claims of attorneys to compensation for their

services and their rights of action to secure it are property of which they cannot be deprived without due process of law and no presumption of law would be indulged that Congress so intended, yet the construction contended for before the Court of Claims and here would have that effect, and as we have above seen, the Court of Claims, by the well known and established rules of construction had the power to reject the obnoxious provisions and maintain its jurisdiction under the remaining valid provisions of the act making due provision for the protection of the rights of all parties, including appellants, Butler and Vale.

3

The judgments of the Court of Claims being within the jurisdiction of that court the remedy of the appellants for the correction of errors was by appeal to the Supreme Court of the United States. If dissatisfied with such judgments they should have availed themselves of this remedy and prosecuted an appeal from said decree. This they did not do, but accepted the award made to them by the decree. It is submitted that by their failure to prosecute an appeal all their rights were finally adjudicated and their application for relief by the Supreme Court of the District of Columbia comes too late. All the parties were before the Court of Claims and they had their day in that court. The act had but one purpose, and that was the award and distribution of fees. To accomplish that purpose it passed a decree. Four of the parties, including Butler and Vale, actually received in cash the sums awarded to them respectively, and the remaining three parties, to wit, Gordon, Maish's administrator and Robertson, were about to accept in cash the sums awarded to them respectively. Certain other parties were decided to be not entitled to anything, but none appealed

from the decree, though each or all had a right to. The object of the act of Congress, in fact its sole purpose and object, was to have the Court of Claims fix the fees of all persons in its judgment entitled to compensation for services rendered to the Colville Indians. The mode and manner of that distribution was a mere incident. Whether the Secretary of the Treasury was to hand the check to Butler and Vale, or to Butler or to Vale, and they in turn were to pay over the amounts fixed by the Court of Claims as proper compensation to the other attorneys, or whether the Court of Claims, in rendering judgment, was to declare that the Secretary of the Treasury should pay the aggregate sum by means of separate warrants to each of the individuals named in the judgment was a mere matter of detail in the execution of the judgment which Congress intended the court to render.

4

Appellants are estopped from attacking the validity of the judgment of the Court of Claims by reason of their receipt and acceptance of the respective awards of $20,000 and $10,000, made to them by that court.

The Act itself does not identify Butler and Vale as attorneys who have performed services for the Indians, nor does it indicate their connection, in any way, with the case except as mere trustees. The Act provides for compensation for unnamed attorneys, whose identity as well as the amounts to be paid them were matters exclusively for the court's determination.

> "Under a special act of Congress authorizing the Court of Claims to inquire into the merits of a claim * * * the issue to be determined depends upon the question as to the legal rights of the claimant to com-

pensation embracing all questions of law or fact affecting the merits of the claim.

174 U. S., 778, Oaks *vs.* U. S.

The awards of $20,000 and $10,000 to Butler and Vale were in pursuance of the identical process by which the awards to appellees were determined, and consisted of two separate awards to the individuals, not an aggregate judgment to the firm (R. 60). They were not made in pursuance of the provision for bestowing the whole fee upon them, but in direct repudiation of that provision. The capacity in which the awards to them were made was not that of trustees under the Act, but as attorneys ascertained by the court to have rendered services to the extent of $30,000, upon a basis of *quantum meruit*. No jurisdiction was assumed or exercised to make a total award of $60,000, and the aggregate consists of nothing but the individual allowances, *none of which could be valid unless all were*. And in accepting the awards to them of $20,000 and $10,000, respectively, Butler and Vale ratified the validity of *all* the awards made by the court. Nor do they pretend that they were bound to take the sums awarded them in order to protect any right that could not be protected by an appeal or other process. They have taken, therefore, a benefit under the judgment of the Court of Claims wholly and essentially inconsistent with the right claimed under the statute and now sought to be established.

Where one, without objection, suffers another to do acts which proceed upon the ground of authority from him, or by his conduct adopts and sanctions such acts after they are done, he will be bound thereby, although no previous authority exists, as if requisite power had been given in the most formal manner.

12 Wall. (U. S.), 681, Townsend *vs.* Chappell,

and where he has sanctioned those acts by taking under them he will not afterwards be heard to repudiate them.

151 U. S., 551, Lewis *vs.* Wilson.
121 U. S., 201, McConihay *vs.* Wright.

The theory of the cross-bill is that by the valid judgment of the Court of Claims a fund of $60,000 was created, over which that court had no power except to give judgment therefor to Butler and Vale, as an entire fund not separable except by their own act. The amount received by them could only be paid, however, in pursuance of the individual judgments of the court and must have been so received by them and constitutes a benefit under the judgment now sought to be attacked. If the $30,000 award was taken as a part of one inseparable fund they are none the less estopped under the authority of this court.

28 App., 126, Winslow *vs.* B. & O. R. R. Co.

But the alleged agreement "among themselves" was one executed in anticipation of an immediate, direct appropriation by Congress (R. 50), and so indicated upon its face. It is a contract which had fully served its purpose when Congress failed to make a direct appropriation, and had no relation to the situation of the parties in the Court of Claims. Whatever influence it had upon the passage of the Jurisdictional Act, it was merged therein and ceased to be the basis of appellants' or any other party's rights.

The foundation of everbody's right was the contract of Maish and Gordon (R. 8 and 44), under which Butler and Vale were employed.

Appellants were mere sub-attorneys employed by Gordon to assist in the prosecution of the claim of the Indians (R. 51), and the compensation of Maish and Gordon, as fixed by their contract, was 10 per cent, or $150,000 (R. 8), and Gordon is the sole survivor of these contractors;

but appellants have already secured one-half of all the fees awarded, and now claim the judicial power of distributing the rest, among themselves and others, without the aid or supervision of any court.

Such power is repulsive to the spirit of the law, as making them the judges of their own case.

Coke Lit., 212.
Cooley's Const. Lim., p. 508.
3 Dall., 386, Law Ed. 1, 648.
Calder *vs.* Bull.

If they have equities they must submit them to the conscience of the court, whose aid they invoke by bringing in all benefits under the judgment they seek to impeach.

If they are trustees under the Act this court is the appropriate forum for the administration of the trust, and the appellees are the *cestui qui trustent* whose rights are the especial objects of its solicitude.

If those entitled to the benefits of the judgment of the Court of Claims are content that it shall stand, their trustees will not be heard to attack it.

146 U. S., 88, Foster *vs.* Mansfield.

But in any event a court of equity will not take jurisdiction of a subject-matter except in such way as to fully administer it as the equities of all the parties may require, and this is not the object of the cross-bill.

Respectfully submitted,

LOUIS A. PRADT,
HEBER J. MAY,
CHAS. POE,
JAMES B. ARCHER, JR.,
of Solicitors for Appellees.